STATE OF WASHINGTON.

# OFFICIAL OPINIONS

RELATING TO

# QUESTIONS OF SCHOOL LAW

BY THE

## ATTORNEY GENERAL

AND THE

## SUPERINTENDENT OF PUBLIC INSTRUCTION.

PART I

FEBRUARY, 1902.

OLYMPIA, WASH.:
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# OPINIONS OF THE ATTORNEY GENERAL.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, January 30, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR — Your favor of a few days ago in the form of a letter from a certain school director stating that the residents of two or more school districts wish to unite for the purpose of establishing a union or graded school, under sections 9, 10 and 11, article 1, chapter 4, Code of Public Instruction, as amended by the Laws of 1899, but that one of the districts so wishing to unite is in a different county from the other. The question presents itself, Is such a union authorized by law?

It seems plain, from a reading of the entire Code of Public Instruction, that the only case in which contiguous territory lying in different counties may be placed in one district is in the formation of new districts called joint districts, under sections 16, 17 and 18, Code of Public Instruction. Section 10 provides that notification of the formation of the union districts shall be given to the county superintendent, presumably of the county comprising the new district, whose duty it shall be to designate such union district by number, as "Union District No. ——, ——— County," and to notify the county treasurer of the organization of such new district. The directors and clerk of the new district are required to file their oaths of office and certificates of election only in one county, and to file their signature with the treasurer of but one county, and to report to one county superintendent. The sections relating to the formation of union districts are entirely silent as to which county the apportionment of the state school funds shall be paid to. If it had been the intention to allow the formation of union districts in different counties, some one of the counties should have been designated to receive said apportionment.

The sections relating to districts for union or graded schools seem to contemplate the union only of districts in the same county, for they do not provide for conditions which would naturally arise from the union of districts in different counties.

I am of the opinion that the law does not authorize districts in different counties to unite for the purpose of establishing union or graded schools.

Very truly, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, February 6, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR — In answer to your inquiry of the 29th ult., in the form of a letter from a teacher in Pierce county in the following language: "There is a little boy in town who will be six years old in a week or two. His parents desire him to start to school. Are we compelled to accept him as soon as he is six?" I beg to say that under the Code of Public Instruction, section 64, page 384, Laws of 1897, every common school, not otherwise provided by law, shall be open to admission to all children between the ages of six and twenty-one years residing in the school district.

I assume that the child in question resides in the district in the common school of which he seeks admission. I also assume that the only reason upon which his exclusion is sought is the fact that he is not more than six years of age.

Under these circumstances it is my opinion that the child must be admitted as a pupil in the school. 21 American and English Ency. of Law, p. 763, and cases cited.

Section 43, page 245, Laws of 1897, provides that any board of directors shall have power to make such by-laws for their own government and the government of the common schools in their charge as they deem expedient, not inconsistent with the provisions of the Code of Public Instruction, the instructions of the Superintendent of Public Instruction, or the State Board of Education.

Under the above provision it is my opinion that the board of directors would have the authority to make a by-law refusing to

admit children six years of age at any other time than the commencement of a term, or perhaps the beginning of the year. If this is the condition of affairs in the school in Pierce county, then I am of the opinion that the child may be excluded, the regulation being a reasonable one and not in my opinion inconsistent with the law.

Very truly, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, March 1, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR — You submitted inquiries as follows:

"A teacher is employed in a village school, for a definite number of months, and signs a contract made in the usual form. It will be observed that the contract does not mention the subject of vacations.

"During the progress of the school a contagious disease makes its appearance in the village where the school is situated, and the school board orders the school closed for a week.

"Question: Must the teacher either lose this time or make it up, or is she entitled to her pay for the time the school was closed by order of the board? Would the existence of a single case, say of diphtheria, constitute good cause for closing the school?"

Accompanying the above is a copy of the printed form of the contract used in the case stated. This contract makes no provision for abatement of wages while school is closed by reason of epidemic or otherwise by order of the board of directors. Nor does it contain any provision that a teacher shall make up for lost time in such cases. But, by the contract, the teacher agrees to "teach, govern and control the public schools * * * for the term of ——— months, commencing on the ——— day of ——— for the sum of ——— dollars per month, to be paid at the end of each school month."

I assume as a fact that the teacher kept himself in readiness to resume work at the request of the board. The failure to teach was not the fault of the teacher, but was due to the act of the board.

They might have stipulated that the teacher should have no compensation for such time as the schools should be closed by

reason of the prevalence of a contagious disease in the village. In the absence of such a stipulation, the teacher's right to full compensation upon the agreement that he should be paid for the number of months named in the contract, is not defeated by the action of the board in closing the schools, because while the suspension was wise and prudent, the closing was not due to any acts which made it impossible for the school to be kept open.

I therefore advise that the teacher is entitled to his wages for the time during which the school was closed by order of the board, by reason of an epidemic.

The contract itself provides that the teacher shall be entitled to compensation except where he shall be legally dismissed from school, or have his certificate lawfully annulled.

Under section 43 of the School Code of 1897, "Any board of directors shall have the power to make such by-laws for their own government, and the government of the common schools in their charge as they deem expedient," etc.

Under this provision the board is vested with a wide discretion, and if in their judgment it is deemed expedient and necessary to close the schools by reason of a single case of diphtheria in the community, it is my opinion that they have the power to do so. Very truly, W. B. STRATTON,

Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, March 22, 1902.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR — In answer to the letter of C. M. McBride, of Pasco, of some weeks ago, with reference to the division of funds held by districts 3 and 4, for the benefit of the new district No. 5, I beg to say that I take it that he refers, in his letter, to the credits of districts 3 and 4 at the time the petition was granted to establish a new district.

The law simply provides that a just share of the school moneys shall be given to the new district. It seems to me that the more equitable rule to adopt would be to make the basis of this division upon the number of school children in the new dis-

trict at the time it was formed, rather than upon the basis of the school children in the new district at the time the division was made. The statute seems to contemplate that a division shall be made at the time of the formation of the new district.

Very truly, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, May 18, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR—I am in receipt of your favor of the 15th inst., wherein you state, in substance, that owing to a possible lack of harmony among the provisions of law, the custom has grown up in your office of changing the basis of apportionment every time a new school district is organized and has had one month's school after the annual reports of the various county superintendents have been made and filed in your office. Such apportionment being made upon a written statement made by the county superintendent at any time during the year to the effect that a new district has been organized and has had one month's school; and you say that the Superintendent of Public Instruction has made it a practice to include such new district in his next and all subsequent apportionments; and, that it seems to you that this act is in violation of the provisions of law relative to apportionment.

You further say that it has been the custom of your office, upon the receipt of a letter or written statement from a county superintendent at any time of the year, to the effect that a union school has been established and has had one month's school of a grade or grades higher than the grammar grade, or that a new grade has been added to any union high school and has been maintained one month, to apportion to such union or graded school the bonus of $100 provided for by section 10 of the school law, and being in serious doubt as to the legality of the practice, you have propounded to this office for opinion the following questions:

"First: Has the Superintendent of Public Instruction of this state a legal right to deviate from the express provisions of the ninth subdi-

vision of section 22 of the Code of Public Instruction above quoted, and upon the written statement of a county superintendent to the effect that a new district has been organized and has maintained one month's school subsequent to the making of his last annual report, apportion funds to such new district the same as to other districts?

"Second: Has the said Superintendent of Public Instruction the right, upon the written statement of a county superintendent to the effect that a union district has been formed subsequent to his last annual report, and has maintained one month's school, to apportion to said union high school district one hundred dollars ($100) for each grade above the grammar grades?"

In reply I beg leave to say, I have examined the law as carefully and fully as I am able to at this time, and from such examination I am satisfied that the practice of your office as indicated above is very irregular if not illegal. In my examination of the law I have used your recent compilation of 1901, which is not yet indexed, and the references and citations hereinafter made will be to that compilation.

Subdivision 10 of section 33, relating to the duties of the county superintendents, requires such superintendents to make an annual report to the Superintendent of Public Instruction on the first day of August of each year, for the school year ending June 30th next preceding. Said report to contain an abstract of the reports made to him by the district clerks, and such other matters as the Superintendent of Public Instruction shall direct. Subdivision 9 of section 22, relating to apportionments to be made by the Superintendent of Public Instruction, provides that the basis of such apportionment shall be "the last annual reports of the several county superintendents on file in your office at the time of making your apportionment."

The law seems to require the county superintendent to make a full and complete annual report, and it is clear that this annual report is the only proper basis of apportionment of public moneys by the Superintendent of Public Instruction, and for that reason such report should contain all of the information relating to the schools of the county that is necessary to enable the Superintendent to make his apportionment during the following year.

Section 70 provides, that all school districts in this state shall maintain school during at least three months each year, and that all graded school districts in incorporated cities and towns shall maintain school during at least six months each year;

and section 175 provides, that no school district shall be entitled to receive any apportionment of school moneys which shall not have maintained school for the time required by law during the preceding school year.

I am satisfied that the intention of the legislature in the foregoing provision is, that in making the apportionment the Superintendent of Public Instruction shall use the annual reports of county superintendents exclusively as a basis for such apportionment.

Your letter indicates a doubt as to whether the provisions of sections 115 and 116 do not modify the provisions above referred to, but from my examination of the law I am satisfied that the provisions of section 115, to the effect that no new district formed by the subdivision of an old one shall be entitled to any share of public money belonging to the old one until a school has actually been taught one month in the new district; and, by section 116, to the effect that, when a new district is formed from one or more old districts it shall be entitled to a just share of the school moneys to the credit of the one or more old districts from which the new district is formed, and to the effect that the county superintendent shall divide such moneys and also such moneys as may for the current year afterwards be apportioned, relate only to local apportionment and division of property to be made by county superintendents and that said provisions do not affect your apportionment in the least.

I will add further that I believe the county superintendent's annual report should contain the evidence upon which the Superintendent of Public Instruction may apportion to union or graded schools the bonus of $100 provided for in section 10. You will note that the proviso to section 10 entitles such union districts to receive apportionments from the state annual school fund in the same manner provided by law for the apportionment of the state annual fund to other school districts; and, further, that the Superintendent of Public Instruction is required to apportion annually to each union district the sum of $100 for each grade above the grammar grade maintained in such schools. This law seems to contemplate the making of such apportionment upon the same basis as in other cases — namely, the county superintendent's annual reports. For this purpose I believe that the county superintendent's annual report should show

that such additional or higher grade has been maintained in accordance with the spirit as well as the letter of the law.

Very respectfully, E. W. Ross,
Asst. Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, July 8, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR — You have submitted the following questions for opinion:

"First: If a teacher who is employed in a given county at the time the teachers' institute is held in that county, declines to attend the institute in the county in which she is teaching, but without the consent of the county superintendent of her county, attends instead an institute in another county, in session at the same time, and presumed to be equally as good as that in her own county, does she comply with the spirit of the law, is she entitled to her wages during the time she is in attendance at the institute in the other county, and is the district in which she is teaching entitled to its apportionment of school funds, as provided in section 102, heretofore alluded to?

"Second: Should a teacher employed in a given county at the time the teachers' institute is held in such county, refuse to attend the institute in said county, but at some subsequent time during the year attend an institute in another county, would she forfeit her certificate upon her refusal to attend the institute in her own county; that is, the one in which she refused to attend the institute, or must the Superintendent of Public Instruction postpone action in the case until it can be ascertained whether or not she attends any institute during the year?"

The law materially applicable to the questions before me is found in sections 99, 100, 101, 102 and 168 of the Code of Public Instruction. Section 99, so far as applicable, provides that whenever the number of school districts in a county is twenty-five or more the county superintendent "must" hold a teachers' institute, and every teacher employed in the common schools in the county "must" attend the institute.

Section 100 provides that where there are less than twenty-five school districts the superintendent may in his discretion hold an institute.

Section 102 provides that when the institute is held during the time when a teacher is employed in teaching, his pay shall

not be diminished by reason of his attendance "when certified to by the county superintendent," and that in addition to the actual attendance earned by the district, an additional attendance shall be accredited to the district to be determined by multiplying the average daily attendance of the term by the number of days the teacher attends the institute.

Section 168 provides: "Any teacher failing to attend, once in each year, an institute in some county of this state, unless on account of sickness or for other good and sufficient reasons satisfactory to the Superintendent of Public Instruction, may have any certificate he may hold forfeited by order of the Superintendent of Public Instruction."

The aim of the legislature in the foregoing enactments seems to have been to encourage, if not to compel, the holding of an institute in each county each year. In order that the institute may be beneficial and successful in accomplishing the desired results, the attendance of the teachers employed in the county is necessary. The duty of attending the institute in the county of his employment is enjoined upon the teacher by section 99.

By the provisions of section 102 a teacher, who is at the time employed in teaching, is entitled to his "pay" while in attendance at the institute, and the district of his employment is protected against loss by the certificate of the county superintendent showing such attendance. This section seems to have been enacted as an inducement for the teacher to attend the institute in the county of his employment, and to the authorities of the district to encourage, if not to compel, such attendance. The certificate of the superintendent of another county as to attendance would, in my judgment, be of no force or effect in securing to the teacher his pay, or to the district the benefits of such school attendance during the absence of the teacher. The section, however, applies only to teachers who are actually employed or engaged in teaching, and not to teachers who may be residents of the county and not at the time engaged or employed in teaching.

Section 168 authorizes the forfeiture of the teacher's certificate for failure to attend an institute in some county of this state, but the forfeiture is not authorized for failure or refusal to attend any particular institute.

I am unable to find in the law any positive penalty for failure

or refusal of a teacher employed, or unemployed, to attend the institute held in the county of his employment.

From the foregoing considerations I am of the opinion that under the circumstances stated in your first question, a teacher who does not comply with the spirit of the law, is not entitled to his wages during the time he is in attendance at an institute in another county, and that the district in which he is employed is not entitled to its apportionment of school funds as provided in section 102.

I am also of the opinion that under the circumstances stated in your second question, the certificate of the teacher is not subject to forfeiture for his failure or refusal to attend the institute in the county of his employment, if he attends an institute in some other county of the state.

Very respectfully, E. W. Ross,
Asst. Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, July 17, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR—In answer to your inquiry as to what officer, or body, should audit teachers' institute expense bills, I beg leave to say: The law requires the holding of a teachers' institute in counties with twenty-five or more school districts by the superintendent, and in counties with less than twenty-five school districts the superintendent may, in his discretion, hold an institute. Section 104 of the Code of Public Instruction is as follows:

"SEC. 104. The county superintendent must keep an accurate account of the actual expenses of the institute, with vouchers for the same, and present the bill to the county commissioners, who shall allow the same: *Provided*, That such amount shall not exceed in any year the sum of two hundred dollars in excess of the amount received as examination fees."

In my opinion the county superintendent is the lawful auditor of all claims or bills incurred in holding teachers' institutes. The law requires of an applicant or candidate for the office of superintendent of common schools certain qualifications not attached to any other office, and particularly not required of county

commissioners. By virtue of these qualifications the superintendent is peculiarly fitted to determine what is and what is not necessary or proper to insure the success of the institute. In the exercise of these functions the superintendent acts under oath and it is presumed his acts will reflect good faith.

The expenditure, however, for this purpose is limited to $200 in excess of the receipts for examination fees, and the commissioners should take notice of the limit and act accordingly. I believe, however, that the commissioners would be justified in refusing to order paid any manifestly improper or unlawful charge. Very respectfully, E. W. Ross,

Asst. Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, August 29, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR — Your letter of the 10th instant, has been referred to me. You submit for the opinion of this office the following inquiries:

"1. Has a county superintendent the right to deal in or become the agent of a firm or firms dealing in school furniture, charts or other apparatus, and to sell to school districts such school furniture, charts or other apparatus, in view of the fact that the third subdivision of section 40 of the Code of Public Instruction in substance forbids the purchase of any of these supplies by school directors without the approval of them by the county superintendent, as to quality and price?

"2. When a county superintendent has approved of school furniture, charts or other apparatus, as to quality and price, has he any right to go further and to say that the district shall not buy these goods? That is to say, has he the right to determine the needs of the district and to dictate what it may or what it shall not buy?

"3. When a county superintendent is dealing in school furniture and supplies, and has become the agent of a dealer in the same, is a competitor called upon to submit his goods to such superintendent for his examination and approval as to quality and price? In other words, has this superintendent not disqualified himself to act in such case by becoming a dealer in school furniture and supplies, or the agent of such dealer?"

The superintendent exercises a general supervisory control over all the public schools in his county. His office necessarily brings him into close and confidential relations with the several

boards of directors, and it is but natural to suppose he will be consulted upon a variety of subjects pertaining to the property, welfare and finances of the districts. He is, in certain cases, empowered to appoint boards of directors and members thereof. The lawful relations existing between the superintendent and the directors are such that his influence and that of his office is great and generally controlling.

Subdivision 3 of section 40, Code of Public Instruction, empowers every board of directors "to purchase such school furniture, charts or other apparatus as may have the written approval of the county school superintendent as to quality and price." While he is not the purchasing agent of the district, he is nevertheless the agent of the public, and of all the districts in his county, in determining whether or not the quality of furniture, charts or other apparatus offered for sale to the districts meets the demands of school work in his county, and also in determining the reasonableness of the price demanded for the same.

The office is one of public confidence and trust to be exercised for the benefit of the public and of the districts. To suggest the possibility of a county superintendent becoming the agent for the sale of school furniture, charts and other apparatus, and approving the same as to quality and price and offering the same for sale to the districts under his control, is to magnify the impropriety of such relation.

The rule of law is well stated in the Am. and Eng. Ency. of Law, Vol. 19, p. 470, as follows:

"DISQUALIFICATION TO ACT—(a) *Of Ministerial Officers.* Ministerial officers are incapable of acting officially, where by certain relations to either party an undue partiality or interest may be apprehended."

In Story on Agency, 9th ed., p. 244, the rule is stated:

"An agent of the seller cannot become the agent of the purchaser in the same transaction."

In *Church v. Marine Insurance Co.*, 1 Mason, 341, Mr. Justice Story states the rule as follows:

"The law will not suffer any man to earn a profit, or expose him to the temptations of a dereliction of his duty, by allowing him to act at the same time in the double capacity of agent and purchaser, either at a public or private sale."

In *Stevenson v. Bay City*, 26 Mich. 44, the mayor executed the controller's bond as surety and approved it. The court said:

"Being a party to it, of course he could not approve it, or represent the city by any official action in regard to it. This would put him in a double and antagonistic position, where his public and private interests would directly conflict. No man can thus deal with himself as a representative of some other interest."

See also *Clute v. Barron*, 2 Mich. R. 192.
*Dwight v. Blackmar*, 2 Mich. R. 330.

In Meechem on Public Officers, section 839, the rule is stated in the following language:

"It is a rule of universal application in the law governing the dealings between principals and agents, both public and private, that the agent shall not be permitted in the course of the execution of his agency, to put himself in such a position that his own interests shall be antagonistic to those of his principal. By accepting the undertaking he impliedly agrees, and it becomes his duty, to use all his endeavors for the benefit and advantage of his principal, to whom belong all the profits, increase and advantages which may result from its execution. This duty cannot be performed if the agent is to be permitted to take advantage of his position and its opportunities to make gain for himself."

From the foregoing considerations I am of the opinion that if a county superintendent is a dealer in, or the agent for a dealer in school furniture, charts or other apparatus, he cannot lawfully approve the same as to quality and price, as provided by law, nor can he lawfully offer for sale or sell the same to the school districts of his county.

I am also of the opinion that the county superintendent is not authorized to determine the needs of the district, and that he cannot dictate what may or may not be purchased by the directors. He is only required to pass upon the quality of goods offered for sale, and the reasonableness of the price.

In answer to your third query, I will say if the superintendent is not offering goods for sale himself, either as agent or otherwise, I see no reason why he should be disqualified to pass upon the quality and price of goods offered for sale by others. If, however, he should attempt to force the sale of his own goods, by arbitrarily refusing to approve other goods, or by bringing his own into competition, or otherwise, I believe the directors would be justified in purchasing furniture, charts and other apparatus not approved by him.

Very respectfully,
E. W. Ross,
Asst. Attorney General.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, August 30, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR — By your favor of the 12th instant you submit for the opinion of this office the following inquiry:

"Has a county superintendent power to divide, in the formation of a new school district, a sinking fund or special fund accumulated in the treasury of the old (divided) district, for the payment of bonds which are not yet due?"

In reply thereto, I beg to say, I am of the opinion that the holder of bonds and interest coupons has the right to insist upon the preservation of the sinking fund provided for their payment, and that any diversion thereof would be an impairment of the obligation of the contract. The law authorizing the superintendent to divide the funds and property, upon a division of the district, does not empower him to divert funds to the prejudice of creditors.

See Dillon, Municipal Corp., 4th ed., vol. 1, sec. 69, p. 118.
*Munson v. Mudgett*, 15 Wash. 321.
*Eidemiller v. Tacoma*, 14 Wash. 376-383.
*State, ex rel. Barton, v. Hopkins*, 14 Wash. 59.
*State, ex rel. Barton, v. Hopkins*, 12 Wash. 602.
*State Savings Bank v. Davis*, 22 Wash. 406.
*Sheldon v. Purdy*, 17 Wash. 135.
*Potter v. New Whatcom*, 20 Wash. 589.

Very respectfully, E. W. Ross,
Asst. Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, September 26, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR — Your letter of the 13th instant contains a statement of facts showing that the boards of directors of certain school districts have, from necessity, reduced the school day to three hours, and you submit the following inquiry:

"The question has been submitted to me whether for the purpose of apportioning the school fund, these half-days, or three-hour days, can

be counted as full days, and upon this question I should like your official opinion at as early a date as you can conveniently give it."

The apportionment is to be made "in proportion to the total days' attendance."

Section 66 of the Code of Public Instruction, so far as applicable, provides as follows:

"The school day shall be six hours in length, exclusive of an intermission at noon, but any board of directors may fix as the school day a less number of hours than six: *Provided*, That it be not less than four hours for primary schools under their charge, and any teacher may dismiss any or all pupils under eight years of age after an attendance of four hours, exclusive of any intermission at noon."

The meaning of the language used by the legislature in section 66 is plain and unambiguous. The legislature has primarily fixed the school day at six hours, but has vested the boards of directors with full power to fix any less number of hours as the school day, except as to primary grades, the minimum number of hours being prescribed.

While we may fairly doubt that the legislature actually intended to empower the boards of directors to reduce the school day to three hours as to grades higher than the primary and limit them to not less than four hours in the primary grades, still, I believe, the language used will bear no other interpretation. The supposed real intention can not control the plain language of the statute. The intention is to be sought in the statute itself. We are not at liberty to speculate as to the intention of the legislature or to construe a law according to our notions as to what ought to have been enacted.

Very respectfully, E. W. Ross,
Asst. Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, September 30, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR—From your letter of the 13th instant it appears that a dispute exists as to the admission of pupils belonging to the grammar grades to the union high schools organized under sections 9, 10 and 11, Code of Public Instruction. It further

appears that there is some friction between the principals of these union high schools and the boards of directors of the districts as to who shall classify the pupils and determine to what grade a pupil properly belongs. It further appears that there is a question raised as to whether the attendance of pupils belonging to grades lower than the high school grades shall be accredited to the union high school district or to the common school district of which the pupil is a resident and you submit the following questions:

"1. Who is authorized to determine to what grade or course a pupil properly belongs, the directors or the teacher?

"2. When pupils belonging to grades lower than the high school grades are admitted to union schools, should the attendance of such pupils be accredited to the union high school district or to the common school district of which the pupil is a resident?"

You direct attention particularly to the last proviso of the 9th subdivision of section 22, and to the latter part of section 10 of the Code of Public Instruction.

In reply, I beg to say:

1. The law empowers boards of directors in certain cases to adopt and enforce rules and regulations essential to the well being of the schools, and to establish and maintain grades and departments. These provisions have reference to the establishment and maintenance of graded schools generally. While there is no positive provision of law upon the subject, nevertheless there are many provisions indicating the intention of the legislature to entrust to the teacher, under such rules and regulations as may be adopted by the State Board of Education and Superintendent of Public Instruction, the power to determine the fitness or unfitness of the individual pupil to enter or pass a particular grade.

2. Where a union high school is formed by two school districts, the boards of directors of the two districts constitute the board of directors of the union district; and, where a union district consists of three or more school districts, the board of directors of the union district is comprised of the chairmen of the several boards of directors constituting the union district. The union district is entitled to receive apportionments from the state school fund in the manner provided for apportionments to other school districts, viz., in proportion to the total days' attendance.

The law authorizes the admission to such union high schools of pupils residing in such union districts belonging to a grade lower than the high school grades, but not lower than the seventh grade. In other words, a union high school consists of pupils, residents of the union district, who are, first, qualified by education to enter the high school course; and, second, not so qualified but admitted by order of the board of directors of the union districts.

It is my opinion that when a pupil, resident within the union district and qualified to enter the high school course, or admitted thereto although belonging to a lower grade, not below the seventh, enters the union school, such pupil is to all intents and purposes a resident of the union district and his attendance enures to the benefit of the union district for the purposes of apportionment of school funds. The last proviso to the ninth subdivision of section 22 does not control in such cases.

Very truly, E. W. Ross,
Asst. Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, October 4, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR— In answer to your request of the 13th instant, I respectfully submit the following:

An examination of the Gunderson law, referred to in your letter, convinces me that the same was originally introduced in the Legislature with an emergency clause. The emergency clause, however, does not appear in the act as published in the Session Laws, or in the Code of Public Instruction, and I, therefore, assume that it failed to pass.

Section 2 of the act provides for the appointment of a text book commission during the month of June, 1901, and every month of June every five years thereafter. Section 5 provides for the appointment of a county board of education in the month of March, 1901, and in the month of March every four years thereafter. From the fact that the act did not become a law until ninety days after the adjournment of the extraordinary session of the Legislature at which the same was finally passed, the

text book commission and the county board of education could not have been appointed at the time required by law.

I am of the opinion, however, that these provisions should be construed as directory only, and that the several county boards of education and text book commissions might be appointed at any time after the act went into effect, and that the said boards and commissions should be appointed at this time in accordance with the provisions of the act.

Very truly, E. W. Ross,
Assistant Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, October 10, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR — I have your letter of today, as follows:

"In a certain village school district in this state, one girl under twenty-one years of age has completed the primary and grammar grade work, and now demands instruction in the public school of her district in what are commonly designated the higher branches. This the board of directors refuses, claiming that they are not required by law to have a high school conducted, that the district is unable to afford it, and that to instruct this one pupil in the higher branches would consume more than one-fifth of the time of the teacher, much to the detriment of the other pupils of the school.

"This raises the question as to whether a board of directors can be compelled, against its will, to establish and maintain a high school, and upon this question I should like your official opinion at as early a date as possible."

In answer I beg to say that the duties of the board of directors of districts in which the above named district falls, are prescribed by section 40, Code of Public Instruction. This section does not require the directors to maintain high school in their district under any circumstances, but simply requires them to enforce the course of study prescribed by the State Board of Education. Section 65, relating to district schools, names the branches which shall be taught. Section 69 provides: "That all pupils who may attend the common schools shall comply with the regulations established in pursuance of the law for the government of the schools, shall pursue the required course of studies," etc. Sec-

tion 156 provides for special meeting of the voters of the district to determine certain questions, but does not provide that at such special meeting the voters may require the directors to institute a high school in the district.

Section 11 provides that the directors of *union districts* shall determine what grade or grades above the grammar grade of the state common school course of study shall be pursued and maintained in such schools. Section 73 provides that —

"In all such city or town districts where the number of children of school age is sufficient to require the employment of more than one teacher, the board of directors shall designate one of such teachers as principal, and such principal shall have general supervision over the several departments of his school. The school or schools in such city or town districts shall be graded in such a manner as the directors thereof shall deem best suited to the wants and conditions of such districts."

It will be noted that the last named section seems to imply that grades higher than the grammar grade shall be taught only where more than one teacher is employed, and then only in cities or towns.

Section 92 provides that —

"In cities having a population of ten thousand or more the board of directors shall have power to establish and maintain such grades and departments, including night, high, kindergarten, manual training and industrial schools as shall, in the judgment of the board, best promote the interest of education in that district."

The State Board of Education establishes the course of study.

The above sections are all that I find bearing directly upon the subject, and from them I gather that it was the intention of the Legislature that in school districts falling within the class you name the school board are not required, or perhaps even authorized to institute high schools. The boards of directors in union districts, in city and town districts, and in cities of more than ten thousand, are all specifically given the authority to maintain high schools. If it was the intention of the Legislature to permit the district you name to maintain a high school, why was not the board given the same power and authority to perform like duties as those in the districts just named?

It is my opinion that the board of directors named by you can not be required to institute a high school, or to have taught high school studies in their district.

Very truly yours, W. B. STRATTON,
Attorney General.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, October 12, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR — Accompanying your letter of the 21st ult., you submit a statement of facts showing that a school district election resulted in an equal and highest number of votes for two persons for the office of clerk; that the candidates receiving the highest number of votes failed to appear before the clerk of election and decide by lot which of the two should be declared elected; that one of the candidates receiving the highest number of votes merely announced that he would withdraw in favor of the other; that after the expiration of ten days the superintendent of common schools filled the vacancy by appointment; that the person so appointed duly qualified, demanded possession of all things pertaining to the office, but the person in whose favor one of the candidates receiving the highest number of votes withdrew, being in possession has refused to deliver, and you request the opinion of the Attorney General as to who is entitled to the office — the person in possession or the appointee of the Superintendent?

Section 155, Code of Public Instruction provides:

"If two persons have an equal and highest number of votes for one and the same office, they shall within ten days, * * * appear before the clerk of election, * * * and publicly decide by lot which of the persons shall be * * * declared elected."

It is further specifically provided that if the persons do not thus decide, the office shall be declared vacant and the superintendent shall appoint. The law is so plain and unambiguous that it will not bear construction.

Assuming the correctness of the above statement of facts, I have no hesitancy in expressing the opinion that the person appointed by the superintendent is the only person entitled to the office.

Very respectfully, E. W. Ross,
Asst. Attorney General.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, October 19, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR—By your letter of the 15th instant, you submit for the opinion of the Attorney General, the following question:

"Must kindergarten schools in cities of 10,000 or more inhabitants be supported from a special fund voted by the school electors of such districts, or may the boards of directors of such school districts pay the expenses of free kindergarten schools out of the current funds of the districts, as other current expenses are paid?"

The provisions of chapter 3, sections 75 to 98, inclusive, Code of Public Instruction, especially pertain to schools in cities of 10,000 or more inhabitants. Many provisions of the Code, however, not contained in chapter 3 relate to and govern such school districts. Subdivision 5, section 92, empowers the boards of directors in cities of 10,000 or more inhabitants to establish and maintain kindergarten schools. No special provision is made in that chapter relative to the source of revenue for maintenance of kindergarten schools.

Provision is made in section 93 for the enumeration of all persons between the ages of 5 and 21 years. By section 64, of the Code, the common schools are open to all children between the ages of 6 and 21 years, residing in the district. This provision and many others undoubtedly apply to schools in cities of 10,000 inhabitants. Chapters 3 and 12 of the Code are parts of the same act.

Section 181, of the Code, is found under the title "General Provisions." This section authorizes the maintenance of kindergarten schools in any "district contemplated by this act," for the instruction of children between the ages of 4 and 7 years. There is no provision made in chapter 3 as to the ages of children to be admitted to kindergarten schools, and certainly the meaning of the words quoted above from section 181 is broad enough to include the city districts.

The first proviso of section 181 provides that nothing in this "act" shall change the law relating to taking the census of school population or the apportionment of state and county funds. I believe the word "act" should be read "section," as the act provides for the taking of the census and for the appor-

tionment of funds, and was intended as a complete codification of all law relating to the common schools.

The second proviso of section 181 requires the costs of establishing and maintaining such kindergartens, as are mentioned in the first part of the section, to be paid by the district from a special fund voted for that purpose.

I am of the opinion that the intention of the legislature was that kindergarten schools might be established and maintained at the will of the district, in connection with the common schools and under the same management for the instruction of children of tender years preparatory to their admission to the common schools, the majority of whom, on account of age, are not entitled to admission to the common schools, as a right, but that the taking of the census of the school population and the apportionment of state and county funds should not be interfered with, or these funds diverted from the support of the common schools proper. In other words, the district desiring to enjoy the special privileges and advantages of kindergarten school service, must maintain such schools at their own expense in the manner indicated by section 181, without diverting any portion of the state or county funds from the usual channel.

Very respectfully, E. W. Ross,
Asst. Attorney General.

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Attorney General's Office,
Olympia, November 25, 1901.

Mr. V. H. Hopson, Prosecuting Attorney Okanogan County, Conconully, Washington:

Dear Sir—You have submitted for the opinion of the Attorney General the following questions:

"First. Can a duly elected school superintendent, or a deputy who is performing all the duties of said superintendent, hold the offices of superintendent or deputy superintendent and school clerk at the same time?

"Second. Can a school superintendent or a deputy duly qualified and acting, hold the office of school clerk within his or her county and legally teach school in the district in which she is acting as clerk?

"Third. In case a school superintendent or deputy wishes to teach in the county in which he or she holds office, can he or she approve her

own contract for teaching? And also, sign her own warrants as clerk of said district?

"Fourth. These warrants being issued and registered, are they valid. Can the treasurer refuse to pay them?"

In reply I submit the following:

Section 30 of the Code of Public Iustruction authorizes the superintendent of common schools to appoint a deputy, who is required to qualify in the same manner as the superintendent, and who is empowered to perform all the duties of the office of superintendent. The law of the case is equally applicable to principal and deputy. I am unable to find any provision in the constitution or laws of this state expressly rendering the offices mentioned in your letter incompatible.

In Meecham on Public Officers, section 420, the general rule applicable to such cases is stated in the following language:

"It is a well settled rule of the common law that he who, while occupying one office, accepts another incompatible with the first, *ipso facto* absolutely vacates the first office and his title is thereby terminated without any other act or proceeding. That the second office is inferior to the first does not affect the rule. And even though the title to the second office fail, as where the election was void, the rule is still the same, nor can the officer then regain possession of his former office to which another person has been appointed."

19 Am. and Eng. Ency. of Law, 1st ed., p. 562u.
*State, ex rel. Metcalf, v. Goff*, 2 Am. St. Rep. 921.
S. C., 15 R. I. 505.
*Stubbs v. Lee*, 18 Am. St. Rep. 251.
S. C., 94 Me. 195.
*Northway v. Sheridan* (Mich.), 69 N. W. 82.
*Attorney General v. Common Council Detroit*, 70 N. W. 450.

"The incompatibility which will operate to vacate the first office, must be something more than the mere physical impossibilty of the performance of the duties of the two offices by one person, and may be said to arise where the nature and duties of the two offices are such as to render it improper, from considerations of public policy, for one person to retain both." 19 Am. and Eng. Ency of Law, 1st ed., p. 562w.

See to the same effect:
Meecham on Public Officers, sec. 420.
*Wilson v. King*, 14 Am. Dec. 85.
S. C., 3 Littell, 457.
*State, ex rel. Metcalf, v Goff*, 2 Am. St. Rep. 921.

In New Hampshire a prudential committee are charged with the administration of the affairs of school districts; the duties are similar to those pertaining to the office of school director under our law. The district auditor examines the accounts of the committee and their vouchers, and reports, whether they are properly cast and supported, and whether the money has been legally expended.

In *Cotton v. Phillips*, 56 N. H. 220, the court says:

"If the same person could hold both offices, he would in effect sit in judgment on his own acts. If there should be any irregularity or misappropriation of funds, of course the opportunity would be afforded for concealing it from the district."

The offices are incompatible when the holder can not in every instance discharge the duties of each. So, if one be under the control of the other.

*Stubbs v. Lee*, 18 Am. Rep. 251.
S. C., 64 Me. 165.

The test of incompatibility is the character and relation of the offices: as where one is subordinate to the other, and subject in some degree to its revisory power; or where the functions of the two offices are inherently inconsistent and repugnant.

*State v. Goff*, 2 Am. St. Rep. 923.

Attorney General Jones held the offices of school director and district clerk to be incompatible. Opinions, Vol. 1, p. 235.

"Every one who is appointed to discharge a public duty and receives a compensation of whatever shape" from the public "is constituted a public officer."

"An office is a public charge or employment, and the term seems to comprehend every charge or employment in which the public are interested."

*People v. Common Council of Brooklyn*, 33 Am. Rep. 659.
S. C., 77 N. Y. 503.

To show that the office of district clerk is in a great measure subordinate to and subject to the supervisory and revisory powers of the superintendent, and that the functions of the two offices are inconsistent and repugnant, and to show that the office of clerk and employment as teacher in the same district, and particularly when those positions are occupied by the county superintendent, are also inconsistent, repugnant aud incompati-

ble, it is only necessary to recite a few of the more important provisions of law.

By section 33 of the Code of Public Instruction it is made the duty of the county superintendent —

1. To exercise a *careful supervision* over the common schools of his county, and to see that *all* the *provisions* of the common *school* laws are observed and followed by *teachers* and *school officers*.

2. To visit each school once in each year.

4. To enforce the course of study adopted by the State Board of Education.

7. To preserve all reports of *school officers* and *teachers*.

10. His report to the Superintendent of Public Instruction must contain an abstract of the reports made *to him* by the district clerks.

12. To appoint directors and district clerks to fill vacancies, however caused, and to appoint directors and clerks of new districts created by him.

13. To apportion school funds and to notify each clerk of the amount apportioned to the district.

16. Upon complaint of the clerk or any member of the board of directors, he is required to endeavor to procure the attendance of children.

Section 34 provides:

"That the county superintendents *shall require* all *reports* of school *district officers*, *teachers* and *others* to be made promptly as required by law. He shall see that the teacher's register is kept in accordance with law and the instructions of the Superintendent of Public Instruction, and that the records of school district clerks are properly kept. He shall also require the oaths of office of all school district officers to be filed in his office," etc.

Under section 36, any person or board aggrieved by any decision or order of the county superintendent may appeal, and the county superintendent is required to make and file transcripts of the record and proceedings relating to the decision complained of.

Section 4: The county superintendent is empowered to create new school districts, distribute the property and funds of the old districts affected and to adjust and apportion their liabilities.

Section 5: He performs certain duties relating to and has control of the transfer of territory from one district to another.

Section 39 empowers him to fill vacancies in the office of school director by appointment.

Section 47 authorizes an appeal to the county superintendent from any decision or order of the board of directors. In case of appeal the clerk is required to prepare, certify and file with the superintendent a transcript of the proceedings relating to the decisions complained of.

Section 48 provides for the election of a school clerk in each district, and empowers the superintendent to fill vacancies occurring from any cause.

Section 49 prescribes the general duties of clerk. The office is very closely associated with, and in many respects subordinate to that of the directors. He is required to make and preserve all records; take the school census; to report to the county superintendent; to issue and countersign warrants, and perform various other duties.

By section 50 he is allowed three dollars per day for taking the census and making his report, and such other reasonable compensation for other services as the directors may allow; but of paramount importance in this discussion is that part of section 50 providing that no account for services rendered by the district clerk shall be audited or allowed by any board of directors, or any warrant issued for the payment of his accounts, until he shall have filed with the board a certificate of the county superintendent of his county that all reports required by law have been properly made, and requiring the superintendent to make out and transmit to such clerks as have complied with the law, the certificate above required.

Section 155: If two candidates for clerk have an equal and highest number of votes, and they fail to appear before the clerk of election and decide by lot which of the two shall be declared elected, the superintendent has power to appoint.

Under section 164, in case the clerk fails to make the reports required by law at the proper time and in the proper manner, he forfeits to the district the sum of twenty-five dollars, and if, through his neglect the district fails to receive its just apportionment of school money, he is liable for the full amount. "Each and all of said forfeitures shall be recovered in a suit brought by the county superintendent," or by any citizen of the district.

Under section 162 the county superintendent, upon complaint

of the clerk, is required to compel the directors to make provisions for the teaching of hygiene, with special reference to the effects of alcoholic drinks, stimulants and narcotics, upon the human system.

Under section 40 the directors are empowered to employ and discharge teachers; to order paid their salaries; to enforce upon teachers observance of the prescribed rules and regulations; to require teachers to conform to the provisions of the law.

By section 52 every teacher employed is required to report to the superintendent the number of the district in which he is employed, the grade of his certificate, the date it expires, the proposed length of term, and at the close of the school year to make a general and final report and to furnish a copy of the final report to the clerk. The directors are prohibited from drawing a warrant for the last month's salary until the reports are made.

By section 53 every teacher is required to keep a school register in the manner provided for, and the directors are prohibited from drawing any warrant for the last month's salary of the teacher until they shall have received a certificate from the district clerk that the said register has been properly kept, the summaries made and the statistics entered, or until, by personal examination, they shall have satisfied themselves that it has been done.

Imagine a person acting as county superintendent exercising careful supervision over himself, also acting as school clerk, and requiring himself to comply with all provisions of law; reporting, as clerk, to himself as superintendent, and furnishing an abstract of that report to the Superintendent of Public Instruction; acting as clerk and at the same time appointing the school directors of his district.

As superintendent, examining his reports as school clerk, and teacher, seeing that the same are properly made and filed within the time required by law, that his records as clerk are properly kept, seeing that his oath of office as clerk is filed with himself as superintendent; teaching in the district where he is clerk and seeing that his register as teacher is properly kept.

Imagine a superintendent acting as clerk of a district and employed as teacher in the same district, keeping the records of a trial or hearing before the board where the decision is subject to review, certifying the records to himself, and as superintendent

impartially reviewing the decision of the board. Fancy a board employing the clerk of their district as a teacher, the same person also being county superintendent, appealing to the Superintendent of Public Instruction from his decision rendered as superintendent, or as superintendent creating a new district, appointing its officers, impartially distributing property and funds and adjusting liabilities, he at the same time acting as clerk and employed as teacher in one of the districts interested; or in such a case transferring territory from one district to another, or, in creating a new district, appointing such a board of directors as will employ him as teacher. Or a clerk or teacher appealing to himself as superintendent, from the decision of the board of directors of the district of which he is clerk; or, employed as teacher in the same district, certifying that he, as clerk, has properly made and filed all reports required, so as to entitle him to compensation as clerk, or such superintendent instituting an action against himself to recover the forfeiture provided in section 164, for failure to perform his duties as clerk; or such clerk and teacher complaining to himself and as superintendent compelling the directors who employed him to provide for the teaching of hygiene, etc., or preventing the treasurer from paying warrants drawn in payment for his own services as teacher or clerk under section 162, or the clerk also acting as teacher, certifying to the board that he, as teacher, has made and filed all reports, and properly kept the school register, so as to entitle him to his last month's salary as teacher; or continuing himself in office by failing to appoint his successor where in case of a tie vote two candidates for the office of clerk have failed to decide by lot who is entitled to the office; or a clerk properly keeping the records of the board in a proceeding looking to his discharge as teacher.

From the foregoing considerations I am of the opinion —

1st. That your first question must be answered in the negative. That a person acting as superintendent or deputy who accepts the office of district clerk, thereby vacates the office of superintendent, or *vice versa.*

2nd. While the position of school teacher may or may not be considered a public office, nevertheless it is an employment in which the public is interested. The duties of the office of clerk and employment as teacher are inconsistent and incompatible,

and a person occupying the office of clerk who accepts employment as teacher thereby vacates the office of clerk. That a person employed as teacher who accepts the office of clerk, does not *ipso facto* vacate the position of teacher, for the reason that the teacher is usually under contract to teach for a stated term, and in order to abrogate the contract the consent of the directors is required.

See Meecham on Public Officers, sec. 421.

I believe, however, that a person employed as a teacher should be considered as inelligible to the office of clerk of the district in which he is employed.

3rd. I am unable to find any law requiring the approval of teachers' contracts by the superintendent. The signing of warrants by the clerk is a ministerial act.

4th. If the duties of the offices have been and are being properly performed, I would advise that no question be raised as to the validity of warrants issued in payment for such services until the vacancy in the office has been filled, by appointment or otherwise. The person performing the duties might be considered an officer *de facto*, and as such, entitled to the emoluments.

Very truly yours, E. W. Ross,
Asst. Attorney General.

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ATTORNEY GENERAL'S OFFICE.
OLYMPIA, NOV. 27, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR—I have your inquiry as follows:

"The last sentence in the third subdivision of section 186 of the Code of Public Instruction, reads as follows:

"'Any diploma granted by the normal department of the University of Washington shall entitle the holder to teach in any public school in this state during life, under regulations consistent with other provisions of law relating to life diplomas.'

"The only 'regulation consistent with other provisions of law relating to life diplomas' that I can conceive, is that they shall be registered in the county where the holders desire to teach, and I have uniformly held that these papers are, to all intents and purposes, life diplomas. Am I right in this ruling? In other words, do these papers authorize the holders thereof to teach in the public schools of this state during

life, upon simply being registered in the counties where the holders desire to teach, the same as all other certificates and diplomas are required to be registered?"

In reply thereto I beg to say:

That I think your ruling is correct. The clause named seems to be a general provision making the regulations for teaching under the life diploma applicable to diplomas granted by the normal department of the State University.

Very truly yours, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, NOV. 27, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR — The following question has been submitted for my opinion:

"Section 144, of the Code of Public Instruction, authorizes the renewal of first and second grade common school certificates, under certain conditions named therein. Does this section authorize a second, a third — that is, repeated renewels of these certificates if the holders continue to comply with the conditions named in said section?"

The certificates in question which are sought to be renewed a second time were issued by the county board of examiners prior to the School Code of 1897.

Early in the year the matter was brought to my attention, and upon a hasty examination of the statute with you we were both of the impression, from the language of the act, that but one renewal was intended. Upon a more careful consideration of the law I am not disposed to change this view.

Said section 144 is as follows:

"The holder of a first grade certificate who shall present to the Superintendent of Public Instruction evidence of having taught successfully twenty-four school months during the time said certificate has been in force, may have his certificate renewed without further examination, which renewal shall be endorsed thereon by the Superintendent of Public Instruction, upon its presentation, for a like term of five years: *Provided*, That such renewed certificate shall lapse upon the failure of its holder to teach for a period of two consecutive school years: *Provided further*, That a teacher holding a second grade certificate who has taught in a primary grade of the public schools of the state for not less than

four years immediately preceding the expiration of said certificate, and who has taken at least one subject of the teachers' reading circle each year under the regulations prescribed by the State Board of Education, may have said certificate renewed for two years as a primary teacher only."

It will be noticed that the renewal shall be for a *like term of five years;* the statute makes no express provision for successive renewals, or for more than one. One renewal certainly satisfies the language of the statute.

The word "lapse" (used in the proviso to section 144) means "to fall; to fail." (Black's Law Dic.) If the proviso, to the effect that the renewed certificate should lapse upon failure to teach for two consecutive years, was intended to mean that the certificate should not again be renewed, the language was unfortunate, for such meaning cannot be gathered from the definition of the word "lapse," and the context does not, to my mind, enlarge or change the meaning. The office of a proviso is to limit the language, not to extend or enlarge it.

End. Int. Stat., p. 354.

Similar rules of construction are applicable alike to statutes and contracts, and I think the following supposed contract fairly illustrates the statute:

Suppose A entered into a written agreement with B to pay the sum of $500 to B at the expiration of five years. B agreed to renew the agreement or extend payment for a term of five years from the time of payment if A furnished to B satisfactory evidence that he had taught school successfully for twenty-four months during the first five year period. And suppose a proviso were inserted in the contract that if during the second five years of such renewed contract A should fail to teach for a period of two consecutive years the money should fall due. It would hardly be contended that A would have the right to a second renewal even though he had not failed to teach for two consecutive school years during the second five year period. And why? Because B had not agreed to grant a second renewal in any event. The contract defines A's rights, and B had agreed to make, in certain contingencies, one renewal, with a proviso that even that might fail if A failed to teach for two years. The fact that B agreed to make one renewal negatives any intention on his part to make two or more. If A failed to teach for two

successive years during the second five year period the money could be collected, under the terms of the contract, and that would end the transaction. If he did not fail to teach two successive years during the second five year period, the money would fall due and could be collected at the expiration of that period, and that would terminate the transaction. In either event A would have no further claim on B.

In the supposed case just given, the contract measures the right and expresses the intentions of the parties, while in the case under discussion the law creates the contract.

Upon what ground can the holder of a first grade certificate demand a second renewal? The law, which defines his rights, and becomes a part of the certificate, does not in terms provide that he shall be entitled to it, and I am not able to find that there was any legislative intent that there should be more than one renewal.

Teaching is a progressive science and the general policy of the law is to require examinations, at frequent intervals, of persons desiring to engage in it, for the purpose of ascertaining their fitness. I am aware that life diplomas may be granted in certain cases, and that a state certificate may ripen into a life diploma, but these are exceptions which prove the rule requiring frequent examinations.

To grant indefinite renewals would, in effect, be granting a life diploma, but life diplomas are provided for by subdivision 1, section 137, School Code. The scholastic requirements are much greater to obtain a life diploma or state certificate, than to obtain a first grade certificate; hence, the reason for limiting holders of first grade certificates to one renewal.

Again, the second proviso of section 144 is to the effect that the holder of a second grade certificate "may have said certificate renewed for a period of two years as a primary teacher only." If it was the legislative intent that first grade certificates should be renewed indefinitely, then by the same reasoning, second grade certificates should be renewed indefinitely with authority for the holder thereof to teach as primary teacher only.

It was held that the words in a lease, "with the option of renewal," were sufficiently definite to enable the court, at the instance of the tenant, to carry them out by decree for specific performance for a renewed agreement for the same period, on

the same terms, *except as to renewal,* as those contained in the agreement.

*Lewis v. Stevenson,* 67 Law J. O. B. 296.

A lease contained the following covenant: "Renewable or pay for the improvements at their valuation." The court in construing the same, said:

"It is well settled that a general covenant for renewal, such as the one in question, does not imply a perpetual renewal. The most a lessor is bound to give on such covenant is the renewal for one term only. A different construction would virtually lead to a grant in perpetuity. Tayl. Landlord and Tenant (7th ed.), sec. 333. *Syms v. Mayor, etc.,* 105 N. Y. 153, 11 N. E. 369; *Pierce v. Grice,* 92 Va. 768, 24 S. E. 392.

In the above-quoted case the covenant was "renewable, or pay for the improvements at their valuation."

*King v. Wilson,* 35 S. E. 727.

The court, in *Kallock v. Kaiser,* 73 N. W. 776, holds that a general covenant to renew implies an additional term equal to the first, and upon the same terms, except the covenant to renew.

See also *Ewing v. Miles,* 12 Tex. Ca. Dec. App. 19.

The rule stated in the above case is based largely upon the ground that repeated renewals would in effect make a perpetual lease, a result not favored in the law, so it cannot be accomplished by mere construction, but only by express and unmistakable language. But the intent of our law is not to grant life certificates except in the instances expressly named by the statute; and the requirements for a life certificate are greater than for a first grade. Prior to the act of 1897 first grade certificates could not be renewed, nor until the act of 1899 could a second grade be renewed for any purpose.

I have talked with members of the committee who drafted section 144 and am satisfied they intended to draw it in such form as to permit successive renewals and at least one member of the legislature that passed the law told me he was of the opinion that the section allowed more than one renewal. But the question for the interpreter of a statute is not what the legislature meant, but what its language means.

End. Int. St., sec. 7.

The expressed views of legislators as to the object and effect of particular provisions of an act under discussion are entitled to little weight.

End. Int. St., sec. 30.

The statute is, to my mind, susceptible to the two constructions, and after the examination of many authorities, and I am unable to express any decided opinion, but am inclined to the view that the language of the statute contemplates but one renewal of first and second grade certificates. It would also seem that the statute contemplates successive renewals of state certificates. (Sec. 137, School Code.)

Very truly, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, Dec. 17, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR — From your communication of recent date, it appears that the city of Seattle school district desires to extend its boundaries so as to include a portion of Mercer Island, situated in Lake Washington, and separated from the city of Seattle by a body of navigable water some two miles in width, for the purpose of establishing an industrial school thereon. The opinion of the Attorney General is desired as to whether or not the district may lawfully annex land on Mercer Island.

It appears from the plat submitted with the communication that no other school district intervenes so as to separate the boundaries of the Seattle school district from Mercer Island, or the land desired to be annexed. I am of the opinion that the land desired to be annexed is contiguous territory within the true construction of the Code of Public Instruction as applied to this particular case. No greater objection can be urged against the proposed annexation on account of the distance being two miles than if the distance were but five hundred feet, or even a lesser distance.

Very truly, E. W. ROSS,
Asst. Attorney General.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, December 27, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR — Referring to a conversation had with you a number of days ago, regarding the attendance of teachers upon the county institutes, I beg to say that under section 99 of the school code it appears to be the duty of every teacher holding a valid certificate employed in a common school in the county in which the institute is held to attend such institute during its whole time.

Section 168 of the same code provides that any teacher failing to attend once in each year an institute in *some county* of this state, unless on account of sickness or for other good and sufficient reasons satisfactory to the Superintendent of Public Instruction, may have his certificate forfeited, etc.

I think the forfeiture of the certificate may be declared only in cases where a teacher fails to attend the institute in some county in the state once in each year.

It does not appear in the particular instance named by you that there has been such failure, and for that reason I am of the opinion that no ground for a forfeiture exists.

Very truly, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, February 17, 1902.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR — I have your letter of the 5th inst., submitting the following inquiries:

"1. In view of section 37 (page 34) of the Code of Public Instruction, has the county superintendent the right to act as his own 'purchasing agent' for the purchase of 'all necessary blanks, books, stationery, postage, printing, etc.,' or may he be compelled to depend upon some other officer or department to purchase and provide such supplies for his office?

"2. If a 'circular of information pertaining to the schools of his county, for the use of schools, school officers and teachers' issued by a county superintendent is reasonable as to price (cost of printing and

postage) have the county commissioners any discretion in the matter of allowing a claim for the payment of the same? In other words, who is to determine the necessity for such circular of information, the superintendent or the commissioners?"

I am of the opinion that the county superintendent may act as his own purchasing agent for the purchase of all necessary blanks, books, stationery, postage, printing and other expenses of his office.

Otherwise why should the superintendent be required to furnish quarterly the sworn statement provided for in section 37? While the county commissioners are the business managers of the county and may appoint a purchasing agent (*State v. Friars*, 10 Wash. 352), yet the School Code was designed to define the rights and duties of all school officers, and it seems the intent to allow the county superintendent to make such purchases is quite clear, but I do not think the power could be exercised so as to interfere with the laws regarding county printing or any contract entered into in pursuance thereto.

The second question is based on a statute, said section 37, which is hardly susceptible of two constructions, for it expressly states that as to the necessity for the printing and issuance of circulars of information pertaining to the schools of his county for the use of schools, school officers and teachers, the county superintendent shall determine, and I think the county superintendent is to determine the necessity for such circular of information.

Very truly, W. B. STRATTON,
Attorney General.

# SYNOPSIS OF OFFICIAL OPINIONS AND RULINGS ON QUESTIONS OF SCHOOL LAW HERETOFORE PUBLISHED.

## BY ATTORNEY GENERAL.

1. Any person who is actually the head of a family; that is, who is under legal obligation to provide for the support and education of persons dependent upon him, and who is in fact providing for their education and support, is the head of a family for the purpose of signing petitions relating to school matters, whether he is a legal voter or not. Any person who is not the head of a family within the definition given above is not qualified to sign such petition, though he be a legal voter. —JONES, Nov. 3, 1891.

2. When a petition is presented to a county superintendent praying for the organization of a new school district, he may, after he has heard all the evidence presented by the parties interested, exercise his judgment, within reasonable limits, in the organization of such new district and the fixing of its boundaries, and in so doing, he may correct any mistakes that may have been made in the description given in the petition, and in a proper case modify the boundaries described therein.—JONES.

3. A person can not legally hold the office of school district director and that of school district clerk at one and the same time.—JONES, Aug. 23, 1892.

4. Children of school age, residing upon military reservations lying within any school district, constitute a legitimate portion of the school population of the district and should be enumerated as other children are.—JONES.

5. If a teacher is a near relative of a member of the school district board, he is not by reason of such relationship alone, rendered ineligible to election as a teacher in a school under the management of such board of directors.—JONES.

6. When cities, in extending their limits, take in other districts or parts of districts, and in so doing take in a part or all of the school district officers of such included school districts, the officers so taken into the city district do not become a part of the board of directors of the city districts so extending their limits.—JONES, Aug. 22, 1890.

7. The stated reading of the Bible in the public schools of this state is a religious exercise within the meaning of the constitution, and as such is thereby prohibited in section 11, article 1 of that document.—JONES, Sept. 19, 1891.

8. County superintendents can be compelled by mandamus to furnish to the Superintendent of Public Instruction all information specifically

required by law, and such other information as the Superintendent of Public Instruction may desire in the administration of his office, such information to be of such a character as the county superintendent possesses or as he can reasonably obtain. For a persistent refusal to furnish such information, he may be removed from his office. In turn, school district clerks may be compelled by mandamus to furnish to the county superintendent all information required by law, and for a persistent refusal to do so, they may be removed from office.—WINSTON, Aug. 18, 1899.

9. The practice of tending bar during vacation time is sufficient cause, if proven, to justify the revocation of a teacher's certificate.—WINSTON, Aug. 24, 1900.

10. A union high school district cannot be formed by the union of school districts lying in different counties.—STRATTON, Jan. 30, 1901.

11. In case a school is closed by order of the board of directors, because of the prevalence of a contagious disease in the district, the teacher is entitled to his wages during the time school is so closed, and he cannot be required to make up the time lost by the closing of the school, unless it is so stipulated in his contract with the directors.—STRATTON, March 1, 1901.

12. In case of the formation of a new school district by the division of an old district or districts, the basis of the division of the funds of the old district or districts should be the ratio of the number of school children in each district at the time of the *formation* of the new district. STRATTON, March 22, 1901.

## DECISIONS BY STATE SUPERINTENDENT.

1. The powers and duties of a county superintendent of common schools, under the law, are mainly executive and supervisory. He has, in addition, limited judiciary power in cases of hearing petitions and appeals; but in the exercise of this power he should not lay aside his executive and supervisory functions and assume the attitude of a judge in a case at law, leaving to the parties interested the entire burden of conducting the investigation. He should, on the contrary, exercise his other official powers to the extent necessary to enable him to investigate thoroughly the matter before him, elicit all necessary testimony, and thus have at hand the data upon which he will be able to render the just and equitable decision required of him by law.

2. When the officers of a new school district have been appointed, and have qualified according to law, the new district is fully organized and possesses all the powers of any other school district, though by a failure to have the required amount of school within one year it may forfeit its organization and cease to exist as a corporation.

3. The terms of office of all the first officers of a new school district expire at the time of the first annual election succeeding its organization, whether those officers were appointed by the county superintendent or hold their positions by virtue of a previous election in the old

district or districts from which the new district was taken. They are only temporary officers in either case.

4. For the purpose of visitation by the county superintendent, the term "school" is construed to mean a department or room—a distinct collection of pupils under the supervision or instruction of a teacher, though that department, room or collection, may be but a part of the system or systems of schools of a city or town. Any other interpretation of the term would defeat the primary object of the law.

5. The successors of all school district officers appointed by the county superintendent should be elected at the next annual school election succeeding their appointment.

6. In case a school district should fail to elect officers at the time and in the manner prescribed by law, the officers whose terms of office expire at the time such election should have taken place, do not of right hold over, or continue in office until the next or some subsequent annual election. This opinion is based upon the fact that school district officers, by failing to order the annual election to be held, at which all school district officers must be elected, might continue themselves in office perpetually, by giving no opportunity for the electors to express their will as to whom they desire as the officers of their district. In such cases the county superintendent should, upon a petition, declare such offices vacant, and should appoint other officers to fill the vacancies, in accordance with the wishes of the electors of the district. If, however, no protest is made by the people of the district, the old officers may be allowed to continue in office, and their acts will be perfectly legal. They are at least officers *de facto*.

7. A board of directors cannot dismiss a teacher simply because the teacher is unpopular, or does not give general satisfaction. They must first establish the fact that he is incompetent, or that he has violated the law or the terms of his contract. Neither can boards of directors make contracts that are not in accordance with law.

8. The spirit of the code is that school houses shall be used for *public school purposes*, and all incidental uses must be under such restrictions as to result in no injury to the school or to the school property.

9. Boards of directors and other school officers possess such powers as are specifically delegated to them by law, and such other implied powers as are necessary in order to transact all business specifically prescribed by law. In other words, their powers are ministerial, not plenary.

10. It is the duty of boards of directors to make all necessary rules and regulations for the systematic transaction of their official business, and to transact all business *as a board, at board meetings*.

11. In the absence of any by-law of the board prescribing the manner of calling them, special meetings of the board of directors may be called by the chairman, or by a majority of the board.

12. A board of directors can not legally employ a minor child of one

of the directors to perform services for the district unless such child has been first emancipated by its parent. Unless the child has been emancipated, the parent may lawfully claim its wages, and thus the director would be placed in the attitude of auditor of his own accounts against the district.

13. All persons between the ages of five and twenty-one years, whether married or single, residing in any school district on the first day of June, should be enumerated by the school district clerk. The simple fact that a person is married does not debar him or her from the privileges of the common school in this state, under existing laws.

14. The notice to be given by the school district clerk, of all meetings of the board of directors, is not a notice to the public, but simply a notice to the members of the board. A failure to give the required notice does not, of itself, invalidate the meeting, provided all members of the board actually attend the meeting and participate in its transactions.

15. It is the duty of the directors to provide for and maintain a public school in the district, open to all children of school age residing therein, but they have no power to apply the public school money to the maintenance of any private school, for the benefit of individual pupils of the district.

16. A teacher does not forfeit his certificate by non-attendance at a teachers' institute, but simply renders it *forfeitable* in case he has not a valid excuse for non-attendance. In other words, a *forfeiture* does not and can not exist until a declaration of the forfeiture has been made by the proper authority.

17. That provision of the school law which requires the school district clerk to certify to the county auditor the levy of special taxes on or before the first day of September of the year in which the levy is ordered to be made, is not mandatory in regard to the time of making the certificate. That is to say, a failure to make the certificate on or before the first day of September does not invalidate the levy. The county auditor may lawfully receive the certificate and enter the levy upon his books at any time prior to closing them. But a special tax levied one year cannot be certified and entered upon the auditor's books the next year. Any special levy is based upon the assessment of the year in which it is made, and it cannot consistently be based upon the assessment of one year and collected upon the assessment of another.

18. The law requiring the county superintendent to grant temporary certificates under certain conditions is mandatory, provided that the conditions contemplated by the law are complied with; and the certificate in lieu of which the temporary certificate is granted, or upon which the application is based, need not be a certificate which is in full force and effect at the time the application is made.

19. A contract to teach does not, either directly or by implication, include the doing of janitor work by the teacher; and unless a contract to teach specifically states that the teacher is to perform that service,

the directors must provide some person other than the teacher to perform duties of janitor for the school.

20. Teachers, principals and city superintendents, in keeping registers and making reports, should record and report only the *actual* attendance of pupils. School districts are entitled to accredited or constructive attendance in but one case, and that is when the school is closed for the purpose of allowing a teacher to attend a teachers' institute. In this instance the accredited attendance should be added by the county superintendent before making his annual report, and should be determined by multiplying the average daily attendance, as reported by the teacher, by the number of days the teacher was actually in attendance at the institute. The teacher who marks pupils as present on days when the school was not for any reason in session, is guilty of falsifying his records, and is liable to prosecution for so doing.

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STATE OF WASHINGTON.

# OFFICIAL OPINIONS

RELATING TO

# QUESTIONS OF SCHOOL LAW

BY THE

## ATTORNEY GENERAL

PART II

COMPILED BY

R. B. BRYAN,
*Superintendent of Public Instruction.*

SEPTEMBER, 1904.

OLYMPIA, WASH.:
THE QUICK PRINT,
1904.

STATE OF WASHINGTON.

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# OPINIONS OF THE ATTORNEY GENERAL.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, January 2, 1902.*

Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:

DEAR SIR—You have submitted for my opinion the following inquiry:

"May the board of directors of a school district allow the school house to be used for dancing purposes?"

In reply thereto permit me to say:

The eleventh subdivision of section 40 of the Code of Public Instruction, relating to the powers and duties of boards of directors, provides as follows:

"11. To authorize the school room to be used for summer or night schools, literary, scientific, religious, political, mechanical or agricultural societies, under such regulations as the board of directors may adopt."

The mention by the legislature of the above purposes for which the board of directors may authorize the school room to be used excludes the idea that they may authorize the use of the school room for any other purpose.

I am of the opinion that the board of directors are not empowered to authorize the use of the school room for dancing purposes.

Very truly yours, W. B. STRATTON,
Attorney General.

* Should have been included in former volume. Omitted by mistake.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, March 11, 1902.

Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:

DEAR SIR—I received from a gentleman whom I take to be a teacher in one of the schools in this state the following inquiry:

"In case a school is closed by order of the board of directors, because of the prevalence of a contagious disease in the district, is the teacher entitled to his wages during the time the school is so closed, providing his child takes the disease too, and the family is quarantined? Can the teacher be required to make up the time so lost?"

It has not been the practice of this office to give opinions upon school law except when the request came through the Superintendent of Public Instruction. For that reason I address this letter to you, which may be made use of as you see fit. On March 1, 1901, this office rendered you an opinion to the effect that under a contract providing that the teacher agrees to "teach, govern and control the public schools * * * for the term of ..... months, commencing on the .... day of .....; for the sum of ..... dollars per month, to be paid at the end of each school month," the teacher was entitled to his wages for the time during which the school was closed by order of the board of school directors by reason of an epidemic.

I assume that the contract in question is one containing the clause above set out.

Under these circumstances, I do not see how the fact that the teacher's child takes the disease after the school is closed by order of the directors, can change the rule. I do not understand that the quarantine prevented the teacher from attending to his duties at any time the school was not closed by order of the directors, and am therefore of the opinion that the teacher is entitled to his wages during the time the school was closed by order of the board of directors and that he is not required to make up the time lost by reason of the school being closed. I am

Very truly yours, W. B. STRATTON,
Attorney General.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, May 1, 1902.

Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:

DEAR SIR—You have submitted to this office the following question propounded to you:

"Do the directors of a district have the power without a vote of the district to provide free text books for the schools under their charge?"

The letter asking you this question suggests that the eighth subdivision of section 40 of the School Code is in conflict with section 106 of the School Code. Said section 40 was amended by the legislature of 1901 (Session Laws, p. 46). This amendment, however, did not change the eighth subdivision as originally passed in 1897. Said section 106 was amended by the legislature of 1901 (Session Laws, p. 380). Sections 107 and 108 of the School Code of 1897 were also amended by the act of the legislature of 1901 (Session Laws, p. 380). The eighth subdivision of section 40 is to the effect that every board of directors shall provide free text books and supplies to be loaned to the pupils *when directed by a vote of the district to do so.* Sections 106, 107 and 108 of the School Code of 1897 should be construed with the eighth subdivision of section 40, and when so examined, the meaning is plain. Section 106 provided for an annual submission to the electors of the district the question of providing free text books, etc., for the use of pupils attending the common schools. If the vote favored the furnishing of free text books, etc., then, under the eighth subdivision of section 40, it was the duty of the board to provide them. The act of 1901, amending sections 106, 107 and 108, operated to repeal these sections, and under the amendatory act a discretion is given to the school district officers to provide text books for carrying on the school work. The eighth subdivision of section 40 depended for its operation upon section 106. Section 106 having been repealed by the amendatory act, the eighth subdivision of section 40 is inoperative, so that there is really

no conflict between section 106 as amended by the act of 1901 and subdivision 8 of section 40 of the School Code.

Very truly yours, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, June 9, 1902.

Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:

DEAR SIR—I have your inquiry as follows: "Can a union high school district lawfully issue bonds for the purpose of building a school house?" and requesting an opinion thereon.

Union high school districts were first provided for by sections 9, 10 and 11 of the School Code of 1897 (Session Laws of 1897, pages 359 and 360). The sections just referred to did not authorize the board of directors of the union district to levy special taxes for the purposes of furnishing school facilities for the union district, or for the payment of teachers' wages, or for the purchase of fuel, supplies, globes, maps, books of reference or other appliances for teaching, or for the purpose of furnishing transportation for pupils to and from school. Section 10 of the act of 1897 was amended in 1901, giving the board of directors of the union district power to levy special taxes for the purposes just mentioned. The fact that section 10 was so amended shows that the legislature did not consider that without a grant of such special power the board of directors of the union district had authority to levy such special taxes.

Section 11 of the act of 1897 provided that "all expenses of such union high schools shall be borne by the districts so united in proportion to the amount of funds apportioned to each district by the county superintendent, and the board of directors of each district shall issue warrants for such amount." From the law just above quoted it is quite evident that the legislature did not contemplate that the union district as such could levy taxes or draw warrants, but that those matters should be left entirely to the districts forming the union district. No

express authority was given to boards of directors of union districts by the law of 1897 to issue bonds, and the entire act of 1897 indicates that it was not its purpose to clothe the directors with such power. Section 11 of the act of 1897 was amended by House Bill No. 472 of the Laws of 1899, and this section as amended left out the above quotation from section 11. Section 112 of the School Code of 1897, which had no reference to union districts, was amended by chapter 177 of the Laws of 1901, and the section as amended granted the boards of directors of union schools the power to levy a special tax upon the taxable property of the union district not to exceed three mills on the dollar for the purpose of paying teachers' wages and other purposes, and provided further that the levying of such tax by such union school district board should not prevent the electors of any district within such union district from levying a tax of ten mills, as provided in the previous part of the section. No law has been passed since the law of 1897 directly authorizing union school districts to issue bonds. From the above consideration I am led to the conclusion that it never was the intention of the legislature to permit union high school districts to issue bonds, and without authority from the legislature such districts would have no power in the premises.

Again, section 6 of article 8 of the State Constitution provides that no school district shall for any purpose become indebteded in any manner to an amount exceeding one and one-half per centum of the taxable property in such school district without the assent of three-fifths of the voters therein, etc., nor in cases requiring such assent shall the total indebtedness at any time exceed five per centum of the value of the taxable property therein. Suppose that a union high school district was composed of two other districts and each of those districts was indebted to the full extent of the constitutional five per centum. If the union district had the power to issue bonds to the extent of five per centum of the taxable property in the

two districts composing the union district, it is a serious question in my mind whether a grant of that power by the legislature would not be in contravention of the constitutional provision above referred to.

Very truly yours, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, July 16, 1902.

**Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:**

DEAR SIR—I have your letter of recent date submitting an application for a life diploma, valid during the life of the holder. It appears from the papers submitted that in 1886 or 1887 applicant took the examination under the act of 1886 (Vol. 4, page 409, Pierce's Code) and received a certificate, which entitled him to teach for a period of five years. It does not appear that this certificate was ever renewed or that application was made until as late as 1897 for a life diploma to be issued thereon. The act of 1886 provides that territorial certificates, such as applicant's, "may be renewed without reexamination" and that "life diplomas shall be granted only to such applicants as shall file with the board satisfactory evidence that they have taught successfully for ten years. * * * In other respects the requirements shall be the same as those required for territorial certificates." The act of 1889-90 (Session Laws, page 348) repealed, both by implication and by express repeal, the act of 1886, and the School Code of 1897 repealed the act of 1889-90. Both the act of 1889-90 and of 1897 exacted greater requirements for state certificates and life diplomas than did the law of 1886. It appears that the State Board of Education adopted rule 5, page 220, Course of Study for the Common Schools, published in 1900, which provides that "Persons holding Washington territorial certificates may

be granted a life diploma * * * upon passing examination in the additional subjects required by law."

Both the act of 1889-90 and of 1897 provides that "Nothing in this act shall be construed to invalidate the life diploma or the state or territorial certificates granted under the laws of the territory of Washington or of the State of Washington, but the same shall continue in effect the same as life diplomas and state certificates granted under the provisions of this act." Applicant's contention is: First, that the act of 1886 has not been repealed; and, second, that he obtained a vested right under the act of 1886 to obtain a life diploma without further examination upon compliance with the requirements of the law.

As stated above, I think the act of 1886 has been repealed, and I do not think he acquired any right to obtain a life diploma without examination which the legislature could not take away at least before the life diploma was issued. It does not seem to me that under the act of 1886 he acquired any vested right to secure a life diploma without further examination. Under the act of 1886 it seems to have been discretionary with the Board of Education to grant or withhold the renewal of a territorial certificate without re-examination, and I do not find anything in the act which makes it obligatory upon the board to grant a life diploma without re-examination, and it does not seem to me that the saving clauses of the acts of 1889-90 and 1897, which are practically identical, had the effect of giving to a holder of a territorial certificate any greater rights than he possessed under the laws in force at the time when the territorial certificate was issued.

In making rule 5 above, I am of the opinion that the State Board exercised a lawful authority and that it cannot be required to issue a life diploma until the provisions of the rule are complied with by the applicant.

Very truly yours, W. B. STRATTON,
Attorney General.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, November 14, 1902.

Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:

DEAR SIR—I have yours of today as follows:

"At the last apportionment of school funds the school districts of the county of Adams lost something more than $1,700 through the negligence of the county superintendent of that county, he having failed, after numerous appeals to him, to file his report with me before the 20th of August, at which time it was necessary for me to make the apportionment of state school funds as prescribed by law, and as rendered absolutely necessary by the condition of other work in my office. I made the apportionment in exact accordance with law and with your instructions. I think the people who lost the money are not blameable, to any great extent, for this loss, and that they are in general in great need of the money so lost. In view of these facts, I desire you to answer the following questions:

"First: Am I, as Superintendent of Public Instruction of this state, under any legal obligation to restore the money so lost to the school districts of Adams county?

"Second: Is it optionary with me to restore this money or not, as I see fit?"

It is the paramount duty of the state to make ample provision for the education of all children within its borders. In the performance of this duty the legislature has provided for a uniform system of public schools and has defined the methods of distribution of public moneys for their support. It was designed that the state school fund should be apportioned at stated times, by the Superintendent of Public Instruction, among the several counties of the state in proportion to the total days' attendance; and to enable the official named to effect the purpose of the law, the various county superintendents are required to file a report with the Superintendent of Public Instruction on August 1 of each year, and a penalty attaches for failure of the county superintendent to make such report.

There is no doubt that your apportionment in this instance was made in strict accordance with the law, and I do not think you could be required to do more than you have done; but inasmuch as the purpose of the law is to distribute the money among the counties in proportion to the total days' attendance,

I believe it is optional with you to relieve the county from the negligence of its school superintendent and to restore what was lost. At least the statute does not clearly prohibit you from so doing.

Very truly yours, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, April 2, 1903.

Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:

DEAR SIR—You have submitted for the opinion of the Attorney General the following statement of facts and subjoined inquiries:

"School districts Nos. 18 and 19 of this county constitute union high school district No. 2 of this county. Recently a new school district was formed, and in the formation of it a part of the territory of school district No. 19 was detached and included in the new district.

"Over this act a controversy has arisen as to the right of the county superintendent to detach territory from the union high school district—a district in the creation of which he took no part. This gives rise to two questions, as follows:

"First: What is the status of that part of the territory in the new district which was taken from district No. 19, with reference to the union high school district; that is, does it still form a part of the union high school district?

"Second: What is the status of the new school district with reference to the union high school district, only a part of its territory having been taken from the union high school district No. 2?"

In reply thereto permit me to say:

The school law authorizes the formation of union districts by two or more school districts by a vote of the people of the districts proposing to unite. The law also authorizes the superintendent of common schools to change the boundaries of school districts and to create new districts, etc., and prescribes a method of procedure. I find nothing in the law relating to the formation of union school districts that prohibits the superintendent of common schools from changing the boundaries

of the districts comprised in the union district. In case two school districts unite in forming a union district the boards of directors of the two school districts, as a board of directors of the union district, manage the affairs of the union district. If three or more school districts unite in forming the union district, then the chairmen of the several boards, as the board of directors of the union district, manage the affairs of the union district. Therefore all territory in the union district is supposed to be represented by directors elected by the people resident in the territory embraced in the district.

If the territory taken from district 19 and embraced in the new school district remains a part of the territory of the union district, then the people resident in the territory so embraced in the union district would not be represented in the affairs of the union district by a directory elected by their votes. Yet they would be subject to the management of the board managing the affairs of the union district and their property would be subject to taxation at the will of the union district board. This could not have been the intention of the law.

I am of the opinion that the territory taken from school district 19 and now embraced in the new school district is no longer a part of the union district. I am also of the opinion that the new school district, so-called, a part of the territory of which was taken from district No. 19, and, therefore, from the territory of the union high school district, bears no more relation to the union district than any other district in the county.

In this opinion no consideration has been given to any question relating to the rights of creditors of any of the districts or of the union district.

I may add that the provisions of law applicable to the question submitted are vague, indefinite and unsatisfactory, but I believe the foregoing is a reasonable construction.

Very truly yours, E. W. Ross,
Assistant Attorney General.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, April 25, 1903.

**Hon. R. B. Bryan, Superintendent of Public Instruction Olympia, Wash.:**

DEAR SIR—You have requested the opinion of the Attorney General upon the following statement of facts and subjoined inquiries:

**"The ninth subdivision of section 22 of the Code of Public Instruction describes the manner in which state school funds shall be appropriated (apportioned) to the different school districts of this state. A portion of a provisio found near the top of page 26 of that code reads as follows:**

**" 'Provided further, If a pupil attends any school of the state outside his resident district, or private school within his resident district, during the time the resident district maintains school of the grade in which the pupil belongs, the attendance shall be credited to the district in which the pupil resides, unless mutually arranged otherwise by the directors.'**

**"Question: Does the term 'private school,' as used in this proviso, allude to any and all private schools, such as commercial schools, art schools, music schools, etc., or does it simply apply to such schools as give instruction similar in character to the public schools of the state, in so far as the branches commonly taught in the primary, grammar grade and high schools are concerned? In other words, does this provision apply to private schools teaching only special branches as these above enumerated, or in order to come within the scope of this proviso must the private school course of study practically parallel the course of study prescribed for the public schools of the state, in order that the attendance of pupils attending them may be accredited to the resident district or districts of such pupils?"**

In reply thereto permit me to say:

I am of the opinion that the words "private school" as used in the law allude to such schools only as give instruction similar in character to the common schools of the state—that is, schools giving instruction substantially as given in the common schools of the state.

From a consideration of the whole law I cannot believe that the legislature intended to allow a school district to receive the benefit of the attendance of the commercial schools, art schools, music schools and the like.

Very truly yours, E. W. Ross,
Assistant Attorney General.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, May 29, 1903.

**Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:**

DEAR SIR—You have directed the attention of the Attorney General to section 2933 of Ballinger's Code, requiring thirty-five per cent. of all liquor license fees to be paid into the county school fund, and to certain sections of the School Code regulating the distribution or apportionment of school funds, and requested his opinion as to when, to what districts and upon what basis this county fund should be apportioned.

In reply thereto I beg to say:

There is no provision of law creating or authorizing the maintenance of a permanent county school fund. The law does not prescribe the specific purpose for which moneys derived from liquor licenses are paid into the county school fund. The thirteenth subdivision of section 33 of the Code of Public Instruction requires the county superintendent to apportion within ten days after receiving the certificate of apportionment of the Superintendent of Public Instruction, the state annual school fund, *and such other funds as are subject to apportionment,* to the several school districts entitled to receive the same, in accordance with the instructions of the Superintendent of Public Instruction.

I am of the opinion that it is the duty of the county superintendent to apportion to the several school districts of the county all moneys received from liquor license fees at the same time, on the same basis and to the same districts as the funds apportioned to the county by the Superintendent of Public Instruction—that is, moneys derived from that source should be added to the amount received from the state treasurer by virtue of the apportionments made by the Superintendent of Public Instruction.

Very truly yours, E. W. Ross,
Assistant Attorney General.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, June 18, 1903.

Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:

DEAR SIR—I have your inquiry as follows:

"Is it possible under the law to consolidate two continguous districts, one of which contains a city of ten thousand inhabitants?"

In answer I beg to say that the provisions of law respecting the consolidation of districts, in my opinion, is entirely inapplicable to a consolidation of districts, one of which contains a city of ten thousand inhabitants. The above is simply the conclusion at which I have arrived from an examination of the law, and if at any time you want a further statement of my reasons I shall be glad to give them.

Very truly yours, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, June 24, 1903.

Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:

DEAR SIR—I received the following letter from E. C. Davis, county treasurer of Douglas county:

"Since the new law has gone into effect providing that school bonds shall not draw more than six per cent. interest, I find it impossible to sell school bonds for country districts. Many of these districts have just been organized, and need funds badly. Is there any remedy for them?"

I find that under section 120 of the School Code of 1897 school district bonds may not be sold for less than par.

Under a similar statute, applicable to counties, the supreme court in the case of *Hunt v. Fawcett,* 8 W. p. 403, held that a commission might not be paid by the county to the purchaser of the bonds, thus in effect selling them below par. I do not know of any law under which school district bonds may draw more than six per cent. interest annually. The spirit and intent of

the act is plain and it cannot be evaded for the purpose of securing a sale of the bonds.

Very truly yours, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, June 25, 1903.

Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:

DEAR SIR—By your letter of the 8th inst. you requested the opinion of the Attorney General upon the following statement of facts and subjoined inquiries:

"The superintendent of Snohomish county has propounded to me some questions involving some legal points that I do not feel able to grapple with, and I therefore refer them to you for your official opinion:

"As a preface to the questions submitted, I have to state that on the 5th day of last May the electors of Arlington, Washington, voted to incorporate that town. The act of incorporation was completed on May 20, 1903. The town incorporated includes a part of school districts No. 16 and No. 50. (See Code of Public Instruction, Sec. 72.)

"Question: 1st. Is that part of school district No. 16 and that part of school district No. 50, which is not included within the corporate limits of the town of Arlington, a part of the new district which was necessarily created by the incorporation of the town of Arlington?

"2d. If the new district created by the incorporation of the town of Arlington is held to include all territory embraced in school districts No. 16 and No. 50, at the time of the incorporation of the town of Arlington, do the members of the school boards of districts No. 16 and No. 50, who were serving as such at the time the act of incorporation of the town of Arlington was completed, become members of and constitute the board of school directors of the new district created by the incorporation of the town of Arlington? (See School Code, Sec. 12.)

"3d. If it is held that the new district created by the incorporation of the town of Arlington includes all territory embraced in school districts No. 16 and No. 50 at the time the incorporation of the town was completed, does each of these school districts (No. 16 and No. 50) retain its corporate existence until the indebtedness existing in them or either of them at the time the incorporation of the town of Arlington was completed is entirely discharged, or do they become at once a new district except in so far as the payment of any indebted-

ness that may lie against either or both of them is concerned?" (See Sec. 14, Code of Public Instruction.)

In reply thereto I beg to say:

Section 72 of the Code of Public Instruction, as amended by Laws of 1899, p. 21, section 2, so far as material, provides as follows:

"Each incorporated city or town in the state shall be comprised in one school district, and shall be under the control of one board of directors: Provided, That nothing in this section shall be so construed as to prevent the extension of such city or town district a reasonable distance beyond the limits of such city or town: And provided further, That nothing in this section shall be so construed as to change or disturb the boundaries of any school district organized prior to the incorporation of any city or town except in cases of incorporation of cities or towns lying partly in two or more school districts organized prior to the incorporation of such city or town. * * * "

The case presented would seem to fall within the provisions of this section. The town of Arlington is such a town as, according to the first part of the section, must be comprised in one school district. A part of the town cannot remain in each of the two districts. It falls within the exception contained in the second provisio of section 72, and its incorporation changes or disturbs the boundaries of the two school districts, territory of each of which it embraces. Construing this section and the provisions of section 12 of the Code, as amended by section 5 of the act of March 14, 1903 (Laws of 1903, p. 162), requiring the county superintendent, where new school districts are formed by the uniting of two or more districts, *"or by the incorporating of any city or town lying partly in two or more school districts,"* upon being notified "of such action," to designate the new district by a number not the same as that of either component district, together, it would seem that the only logical conclusion that can be reached is that the incorporation of the town of Arlington had the effect of carving out of the territory of districts numbered 16 and 50 a new school district, The provision relating to the creation of a new district "by

the incorporating of any city or town lying partly in two or more school ditsricts" would seem to be out of place in section 12 of the Code under the heading "Article 11—Consolidated Districts," but we must nevertheless give the provision as though found in its proper place such force and effect as the words used import. Having reached the conclusion that a new and independent school district was created by the act of incorporation of the town of Arlington, it necessarily follows that this district embraces no territory outside of the corporate limits, and that districts 16 and 50 remain as heretofore, but with a loss of a portion of their territory, the same as though such territory had been by the superintendent of common schools annexed to another district or formed into a new district.

Your first question, therefore, must be answered in the negative, and this necessarily disposes of the other questions.

As to the second and third questions, however, in order to avoid misunderstandings, I will add that in my opinion it is the duty of the superintendent to record and certify the boundaries of and designate for the new district of Arlington, as in other cases, a number, and under the twelfth subdivision of section 33, as amended by the act of March 14, 1903, to appoint school officers for that district.

The existence of outstanding indebtedness does not prevent the formation of new districts. (See last provision to section 72.) The financial interests and rights of the respective districts are covered by other provisions of the Code with which I assume you and the county superintendent are familiar, but more especially by the fourth, fifth and sixth provisos to section 4 and by sections 115 and 116 of the Code.

Very truly yours, E. W. Ross,
Assistant Attorney General.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, August 3, 1903.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR—By a letter of the 24th ult. you request the advice of the Attorney General upon the following statement of facts and subjoined inquiries:

"Under the provisions of the Code of Public Instruction (Sec. 141), this office has in the past issued first grade common school certificates on diplomas from various normal schools, universities and colleges; also on state certificates and diplomas.

"The law covering this point, as amended by the legislation of 1903 (Sec. 141, as amended), in effect since June 11th, 1903, provides that an 'accredited list' shall be prepared by the State Board of Education, and this office can recognize in future only such diplomas and state papers as are included in this 'accredited list.'

"Questions:

"1. Is this office compelled, under section 144 of the Code of Public Instruction, to renew any first grade certificate issued on diploma or state paper prior to June 11th, 1903, provided that said diploma or state paper has not been placed regularly on the accredited list?

"2. Does the office possess discretionary power in the matter?"

Section 140 of the Code as it existed prior to the legislation of 1903 required the holding at the county seat of each county of the state, at stated times, an examination of applicants for teacher's certificates, the examination to be conducted according to the rules and regulations of the State Board of Education.

Under section 141 of the Code of Public Instruction, as the same existed prior to the legislation of 1903, the Superintendent of Public Instruction was empowered to grant common school certificates without examination to graduates of institutions of learning equal in requirements to the requirements for graduation of certain institutions of learning in the state of Washington.

No argument is required, it would seem, to prove that the diploma or certificate issued by an institution of learning in another state or under authority of another state took the place of the examination required by section 140 and served the same purpose, merely showing the qualifications of the

applicant. The certificate once issued placed the holder in the same category and entitled him to the same rights and privileges as the holder of a similar certificate issued upon approved examination.

By section 144 of the Code, as it existed prior to the legislation of 1903, the Superintendent of Public Instruction was authorized to renew any first grade certificate valid for five years upon presentation of evidence of the holder, and applicant having taught successfully twenty-four school months during the time such certificate was in force, for a like term of five years.

Under the law as it existed prior to the legislation of 1903, it would seem that no question could be raised, and in fact none is raised, as to the authority of the Superintendent of Public Instruction to renew a certificate issued upon a diploma or certificate from an institution in another state or from another state.

There is nothing in the law to indicate an intention to authorize the renewal of a certificate issued upon an approved examination and deny the right to such renewal of a certificate issued upon a diploma from an institution of learning in another state or a certificate issued under authority of another state. If one was entitled to renewal, the other was.

It remains to determine whether the legislation of 1903 changes the law in this respect.

By section 12 of the act approved March 14, 1903 (Laws of 1903, p. 170), there was added to section 27 of the Code a fifth subdivision and other amendments, making it the duty of the State Board of Education to investigate and ascertain the character, thoroughness and comprehensiveness of the work required as a condition of entrance and graduation from the various schools of the character contemplated in section 141 of the Code of Public Instruction and to make a list of such institutions of learning and examinations for certificates in other states as they shall find to be entitled to recognition. Two lists are to be made:

First, "list of accredited schools," and, second, "list of accredited certificates and diplomas," and no certificate or diploma is to be granted in this state without examination except to the holder of a certificate or diploma appearing in one or both of the accredited lists mentioned in said subdivision 5.

Section 140 of the Code, as amended by the act of 1903, requires an examination to be held at the county seat of each county, at stated, times of applicants for teachers' certificates.

By section 141 of the Code, as amended by the act of 1903, the Superintendent of Public Instruction is empowered to grant common school certificates, which includes first grade certificates, without examination, to all applicants who are graduates of normal schools equal in requirements to the state normal schools of Washington or of other reputable institutions of learning, whose requirements for graduation are equal to the requirements of the University of Washington, and also to applicants who hold state certificates or diplomas equal in requirements to the requirements of the State of Washington, provided the name of the institution of learning granting the diploma or the state issuing the certificate or diploma is found upon the accredited list provided for in the fifth subdivision of section 27 of the Code, otherwise the diploma or certificate cannot be recognized. The only material change, therefore, made in the law by the legislation of 1903 is in the provision requiring the State Board to make and file the accredited lists mentioned in the fifth subdivision of section 27 and forbidding the recognition of diplomas or certificates from other states whose names do not appear upon the lists. This change, however, is more apparent than real, for, as the law stood before the change, the Superintendent of Public Instruction and the State Board were empowered to deny recognition to the holder of a diploma or certificate that did not meet the required standard. An important change, however, is found in section 136 of the Code, as

amended by section 30 of the act of 1903, which as amended reads as follows:

"Nothing in this act shall be construed to invalidate the life diplomas granted under the laws of the Territory of Washington, *or to invalidate any certificate or diploma heretofore granted in accordance with the laws of the State of Washington, but the same shall continue in effect in accordance with the provisions of the laws under which they were granted.*"

A comparison of this section as amended with the previous section of the Code will show the importance of the amendment. Assuming that under the law as it existed prior to this amendment first grade certificates issued upon diplomas or certificates from other states were of the same dignity and entitled the holders to the same rights and privileges as first grade certificates issued upon examinations, this section operates as a general saving clause, expressly continuing in full force and effect all such certificates, in accordance with the provisions of the laws under which they were granted.

If this view is correct, and I believe it is, then there is no ground for making a distinction between first grade certificates issued upon diplomas or state papers and certificates issued upon examination, as suggested by your first question.

I find nothing in the legislation of 1903 indicating an intention that the same should operate retrospectively, so as to take from the holder any of the rights or privileges to which a first grade certificate entitled him.

Section 144 of the Code, as amended by section 35 of the act of March 14, 1903, so far as material, provides as follows:

"The holder of a first grade certificate who shall present to the Superintendent of Public Instruction evidence of having taught successfully twenty-four school months during the time said certificate has been in force may have his certificate renewed without further examination, upon its presentation, for a like term of five years, and such renewal and succeeding renewals shall be for like terms of five years: *Provided*, That such renewal certificates shall lapse upon the failure of its holder to teach for a period of two consecutive school years: * * *"

Under this section the holder of a first grade certificate is not required to offer any proof as to his original qualifi-

cations for or right to hold the certificate which he seeks to have renewed. In plain language he is required to prove that under that certificate and while the same was in force he taught successfully twenty-four school months. Assuming now that the holder of a first grade certificate proves to the satisfaction of the Superintendent of Public Instruction that while such certificate was in force he taught successfully twenty-four school months, upon what ground or principle could the Superintendent of Public Instruction refuse to renew his certificate? Clearly, in such a case, if the Superintendent refused a renewal, his refusal would be arbitrary and without lawful reason.

I am of the opinion that these changes were made by the act of 1903 for the express purpose of setting at rest the doubts and uncertainties existing as to the rights of certificate holders, and that the Superintendent is not only authorized, but required, to renew any first grade certificate upon presentation of the proof or evidence required by law, and that in this he has no discretionary power.

Very truly yours, E. W. Ross,
Assistant Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, August 10, 1903.

Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:

DEAR SIR—I have your letter of the 7th of this month, as follows:

"The following question has been propounded to me, and, feeling myself unable to answer it with any degree of positiveness, I most respectfully refer it to you and request your official opinion at your earliest convenience.

"First: Is a board of school directors authorized, under existing law, and without a vote of the school electors of their district directing them so to do, to construct portable school houses—that is, school houses that may be moved from place to place as local and changing conditions may seem to require?

"Second: Under existing law, have the electors of a school district the right to confer such authority on the board of directors?"

The fifth subdivision of section 40 of the School Code, as amended by the act of 1901, Session Laws 1901, p. 378, provides that the board of school directors shall have power and it shall be their duty, "To build or remove school houses, purchase or sell lots or other real estate when directed by a vote of the district so to do. * * * " I do not think the legislature had in mind, when it passed this law, the purchase or construction of portable school houses. At least the law is entirely silent on the subject.

Without reference to the character of the building, the law makes it the duty of the directors to build a school house when directed by a vote of the district so to do. Without such direction I do not think they are authorized to build a school house, whether portable or otherwise. I think the purchase of a portable school house is building a school house, within the meaning of the section quoted.

Very truly yours, W. B. STRATTON,
Attorney General.

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[Supplementary to opinion of August 10.]

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, August 12, 1903.

Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:

DEAR SIR—In my letter of the 10th inst. to you, upon the subject of the purchase by school boards of portable school houses, I think your attention should have been called to sections 156, 157 and 158 of the School Code. Section 156 was amended by the act of 1901, found on page 382 of the Session Laws of that year. Section 40 of the School Code, referred to in my letter of the 10th inst., was also amended by the same act of 1901, which shows that the legislature had them both in mind and intended that they should both have effect if possible.

Section 40 was again amended in 1903, but subdivision 5

was not changed in any particular. We are of the view that the vote of the district mentioned in the fifth subdivision of section 40 may well be construed to mean the determination of the voters at the special meeting provided for in said section 156, so far as this particular case is concerned.

Very truly yours, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, August 15, 1903.

Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:

DEAR SIR—I have yours of recent date submitting five questions:

"First: A student who is a graduate of an accredited high school is admitted to one of our normal schools upon his credentials from the high school, and it is ascertained that he has already completed in the accredited high school one or more of the subjects found in the normal school curriculum for the year or years during which he is required to attend the normal school in order to graduate. Must this student, in order to graduate from the normal school, take all branches or subjects found in the normal school curriculum for the year or years which he is required to attend the normal school, or may he consistently be excused from taking such branches as he has already taken in the high school?"

By section 29 of the Code of Public Instruction it is made the duty of the Board of Higher Education to adopt courses of study for normal schools. This was done by resolution of the board adopted May 8, 1903.

Section 218 of the Code of Public Instruction makes it the duty of the principal of each state normal school to see "that the course or courses of study prescribed are faithfully pursued." I do not find that the principal, or any one under him, has any discretion to excuse graduates from accredited high schools from taking subjects which they have theretofore completed in such high schools. The only effect of a diploma from an accredited high school is to admit the student to an advanced

course in the normal school (Section 222, Code of Public Instruction). I think, however, that the Board of Higher Education, in adopting the course of study for normal schools, may make suitable provision to cover this subject.

"Second: A student who is a graduate of an accredited high school is admitted to one of our state normal schools upon his credentials from the high school, and it is ascertained that he has not completed in the nigh school one or more branches that are presumed to have been completed in such high school, and which he would be required to take in the normal school if he had been admitted by virtue of an entrance examination. May such student be excused from taking the branch or branches in which he is delinquent, or should he be required to take such branches in the normal school, as a condition of graduation?"

If the student has not completed any of the branches required by the course of study in the accredited high school, the normal authorities, upon ascertaining that, may, I think, lawfully require the student to complete the subject before he is entitled to graduate.

"Third: A student is admitted to one of our normal schools by virtue of being the holder of a teacher's certificate, granted in this state. Said certificate shows the student to be proficient in certain branches found in the normal school curriculum for the year or years during which the student is required to attend the normal school. May such student lawfully and consistently be excused from taking such branches in the normal school, or from passing an examination in them? In other words, may the normal school authorities accept the credits found in such certificate as competent and final evidence of the student's proficiency in those branches?"

I do not think the normal school authorities are authorized to accept the credits found in such certificate in lieu of a study of the branches in the normal school.

What was said in answer to question 1 also applies here. The Board of Higher Education, in my opinion, has power to make proper rules to cover this subject.

"Fourth: A student is admitted to one of our normal schools by virtue of being the holder of a certificate granted in another state, by officers who are entirely unknown to us. The certificate shows the student to be proficient in certain branches found in our normal school curriculum for the year or years during which the student is required

to attend the normal school as a condition of graduation. Have the normal school authorities a legal right to accept the markings found in said certificate as competent and final evidence of the proficiency of the student, and to excuse him or her from taking such subjects in the normal school, and from taking an examination designed to test his or her proficiency?"

For the reasons stated in answers to the first and third questions, I do not think the normal school authorities may excuse such student from taking the branches included in the normal school course of study. The Board of Education has control of such matters.

"Fifth: A student in the elementary department of one of our normal schools failed to pass the examination with sufficient credits to entitle her to a second grade certificate, and this after she had almost completed her third and last year's course. She was not granted her certificate of graduation, but the faculty voted to give it to her as soon as she had secured the necessary credits. She left the normal school and attended an accredited high school during the last school year, from which she graduated. Had she graduated from the accredited high school before entering the normal school she would not have been required to take an examination. Now, because of the fact that she has graduated from an accredited high school a year after she failed to graduate from the normal school, she claims that she is entitled to her certificate of graduation, or diploma, from the normal school. Is she entitled to it? In other words, may a student who fails to graduate from any given course in a normal school, after attending the full time required by law, go and attend an accredited high school, or a college or university, graduate therefrom one, two or three years after having failed to graduate from the normal school, claim and be awarded her diploma, or certificate of graduation, from the normal school?"

Strictly speaking, I do not think the law contemplates the granting of diplomas from normal schools in such cases. The student is in no position to demand the diploma as a matter of right. The law presumes that the studies named in the normal school curriculum will be pursued there, and not at a high school or other institution of learning. If this were not so, a student might fail to pass all of the normal school branches, and yet in after years secure a diploma from the normal, upon the production of sufficient credits from some accredited institution. In that case the student would in fact have failed to

graduate from the normal school, yet be in possession of a diploma.

Very truly yours, W. B. STRATTON,
Attorney General.

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[Supplemental to opinion of August 10, 1903.]

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, August 26, 1903.

Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:

DEAR SIR—In answer to the letter of Charles K. Greene, of the 24th inst., I beg to say that the opinion given by this office to you on August 10, 1903, to the effect that school directors were not authorized to construct portable school houses without determination of the voters thereon at a meeting or election, does not apply to city school districts having a population of more than ten thousand. That opinion was given with reference to an ordinary small district.

Very truly yours, W. B. STRATTON,
Attorney General.

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[Supplementary to opinion of August 15.]

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, August 28, 1903.

Edward T. Mathes, Principal Whatcom Normal School, Whatcom, Wash.:

DEAR SIR—I have yours of the 25th inst., suggesting another query in connection with the second question asked by State Superintendent Bryan and answered by letter bearing date the 15th inst. Your question is as follows:

"If a student has satisfactorily completed every subject in a course of study prescribed by the state board for accredited high schools, then enters a normal school and successfully completes in the normal school every subject in the course of study legally prescribed for graduates of accredited high schools, can a normal school compel such student to study branches not prescribed in the legal courses which he has completed?"

In my opinion, one who has satisfactorily completed all the prescribed studies of an accredited high school and successfully completed all the subjects in the normal school required by the Board of Higher Education can not be required by the normal school authorities to take other subjects in the normal school than those prescribed by the Board of Higher Education.

To demand such a requirement would be unjust and certainly not contemplated by the student, because not within the course of study. If the normal school authorities may require other studies than those prescribed, they must, in my opinion, be able to point to some rule of the Board of Higher Education giving such power.

Very truly yours, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, September 16, 1903.

**Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:**

DEAR SIR—In answer to the inquiry of a few days ago asking whether or not a school director may legally draw pay for services rendered the district as janitor:

I have to say that in my opinion a contract of the school board under which a school director for hire acts as janitor of the school house falls within the prohibition of section 45 of the Code of Public Instruction (Section 18, p. 177, Laws of 1903), if it is not invalid from considerations of public policy.

*Tacoma v. Lillis,* 4 W. 797;
*Northport v. Northport Townsite Co.,* 27 W. 543;
*Miller v. Sullivan,* 72 Pac. 1022;
Dillon on Mun. Corp., (4th ed.), Sec. 444.

Very truly yours, W. B. STRATTON,
Attorney General.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, November 10, 1903.

Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:

DEAR SIR—I have your letter of August 27, wherein you ask the two following questions, which will be answered in their inverse order:

"First: Are those school districts which have been consolidated under laws passed prior to the act of 1903 (Chapter 104) entitled to the benefits offered by section 6 of that act?

"Second: Are consolidated districts formed under the provisions of the act of 1903 entitled to the benefits offered by section 6 of that act, before they have operated under that act—that is to say, before the consolidated district has held at least the minimum amount of school required by section 23 of chapter 104 S. L. of 1903?"

Other pressing work has taken our time to such an extent that a few questions left for our opinion have been left until this time.

Section 70, p. 178, Session Laws 1903, was not intended to be retroactive in effect, and any district, consolidated or otherwise, which had complied with the law as it was prior to the amendment of section 70 in 1903 would be entitled to its apportionment of state school funds. Consequently, if the consolidated district in question had maintained school for three months (School Code of 1897, section 70) during the school year immediately preceding the annual report of the county superintendent, of August 1, 1903, it would be entitled to its proper apportionment. (Opinions of Attorney General 1901-2, pp. 7, 8, 9 and 10.)

This brings us to the first question, namely, what is that proper apportionment? or, in other words, is the consolidated district entitled to credit of two thousand days' attendance in your August, 1903, apportionment, in addition to the actual attendance during the school year immediately preceding the annual report of August 1, 1903? I think there is nothing in any of the amendments of 1903 which indicates any intention on the part of the legislature to confine the credit of two

thousand extra days' attendance to districts formed after the passage of the amendments. There is certainly nothing to that effect in the proviso made in 1903 to section 13, yet the proviso constitutes the only change made in said section as it theretofore existed.

The only change, if in fact there was any change, made by section 5, p. 162, Session Laws of 1903, in the amendment of section 12 of the School Code of 1897 was to clearly prescribe the *method* of consolidating districts: It had nothing to do whatever with the matter of apportionment.

Section 13 of the School Code, as amended by the act of 1903, is to the effect that "all school districts formed by the uniting of two or more districts, as provided for in this act, shall be entitled to the funds and to the public property of the other school districts so uniting, and the county superintendent shall apportion all funds to the new district in accordance with this provision, and shall certify such apportionment to the county treasurer: *Provided,* That for the purpose of apportionment the consolidated district shall be credited with two thousand days' attendance in addition to actual attendance."

Consolidated districts existed before the amendments of 1903, and I can find nothing in the amendments leading me to believe that such existing consolidated districts were not to receive a like bounty as those which should be organized thereafter. The proviso to section 70 reads, "For the purpose of apportionment the consolidated districts shall receive * * * "—that is to say, the consolidated districts "formed by uniting two or more districts as provided for in this act." I do not think "this act," as found in section 13 as amended, means exclusively the act of 1903, but the School Code as a whole—the School Code of 1897, with all its amendments. If this is not the proper construction, then there would be a discrimination between consolidated districts, based entirely on the date of their organization.

It is quite evident that discrimination on that ground alone

could hardly be justified. It is obvious, as you say, that the credit of two thousand extra days' attendance was intended as an inducement to consolidation, but those districts which have consolidated without the inducement ought at least to be treated as liberally as those which have consolidated by reason of the inducement, for their wants are presumably the same.

I am of the opinion that the consolidated district in question is entitled in your August, 1903, apportionment to the credit of two thousand days' attendance in addition to the actual attendance.

Very truly yours, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, November 12, 1903.

**Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:**

DEAR SIR—I have the letter of the superintendent of schools of Lewis county submitted to me day before yesterday by your office, from which the following facts may be gathered:

Union district No. 4 of Lewis county had last year one high school pupil. This year it will have several and next year it is expected there will be ten. From the records in your office it appears that this union district was formed last year, and it claims to have earned an apportionment from the annual school fund for that year for the first time. It does not appear from the records in your office that any taxes were levied last year in the union high school district for the purpose of paying teachers' wages or otherwise, from which I assume that no such taxes were levied.

The law under which this district is entitled to participate in the annual apportionment for the school year ending June 30, 1903, is that in force prior to the enactments of 1903; but apportionments for subsequent years will be based upon the acts and amendments of the legislature of 1903.

A union district to be entitled to annual apportionments must, as I take it, be one in fact and not in form only. A mere vote of the people as required by law in favor of the formation of a union district, and the election of union district officers, will not in itself entitle the district to the apportionment. The spirit of the union district law must be complied with.

The statutes relative to union schools appear to be chapter 177, Laws of 1901, and House Bill No. 472, Laws of 1899. These laws provide that pupils belonging to a lower grade than the high school grades may be admitted to the union school, but no pupil belonging to a grade lower than the seventh shall ever be admitted. From this it is quite evident that the union school must be the principal school and not a mere incident to some other school.

In the present instance I understand the facts to be that the union high school pupil, instead of attending a union high school in fact, simply attended the common school of one of the districts composing the union district, along with the other children of all grades. If this is true, I do not see how, under the statutes just referred to, the union district is entitled to any apportionment for the attendance of the high school scholar.

While the law should receive a liberal construction, so as to aid in the building up of union districts, it is also true that such district should comply with the spirit of the law before it is entitled to share in the annual school fund. From my present information, as above briefly set forth, it seems to me that the district earned no part of that fund for the school year last past.

Very truly yours, W. B. STRATTON,
Attorney General.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, November 14, 1903.

Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:

DEAR SIR—Some time ago there was referred to this office for an opinion thereon a letter from a county superintendent of schools as follows:

"A school district wishes to build and furnish a school house that will cost about $9,000. They also wish to put a heating plant into another building at a cost of $1,000, making $10,000 for buildings and furnishings. They have $6.000 cash for this purpose, obtained from the sale of bonds, and they propose to issue general fund warrants for the balance, $4,000. They also propose to transfer their special taxes to the general fund, amounting to about $2,500, and draw all warrants for all purposes, on the general fund.

"Query—First: Have they a legal right to draw general fund warrants for building and equipping a school house?

"Second: If they have not this right, is it the duty of the county treasurer to refuse to register these warrants drawn on the general fund?

"Third: If they continue to draw these warrants, and the treasurer continues to register them, is it the duty of the county superintendent to stop their issue by an injunction?

"This general fund is about $2,000 behind now, and by next spring will be at least $4,000 or $5,000 behind.

"The valuation of the district is about $500,000."

I take it for granted that the "general fund" is derived from two sources, namely:

1. The apportionments made by the Superintendent of Public Instruction and county superintendents of schools from interest accruing on the permanent school fund, together with rentals and other revenues derived from lands and other property devoted to the common school fund, as provided by section 110 of the School Code of 1897 and sections 1 and 3, of Art. 9 of the State Constitution, which must be applied exclusively to the current use of the school district; and

2. The school district's share of the tax levied by the State Board of Equalization under section 111 of the Code of Public Instruction as amended by section 16, p. 380, Session Laws of

1901, as apportioned to it, which may be used only for the support of the common schools of the district.

Whether "current use" and "support" mean the same thing or not (and it would seem that they do within the meaning of the school law), it is quite clear that neither term would include the construction of any permanent structure, such as a school house or a permanent improvement such as a heating plant.

*Sheldon v. Purdy,* 17 W. 135.

The law does not in my opinion contemplate that the special fund arising from the taxes levied by the district for the purposes authorized by law shall be turned over to the fund arising from the two sources named above and the two funds mingled together and all liabilities of the district paid therefrom, for such action would create endless confusion, if warrants for all purposes were to be drawn on that fund. I do not mean to say that it would be unlawful, in a proper case, to turn over to this "general fund" taxes arising from a special levy where the rights of creditors were not affected.

In this case, the special fund having been turned into the "general fund," I do not think it would be the bounden duty of the county treasurer to refuse to register warrants drawn on it for the purposes named in the county school superintendent's letter, for it might be held that those warrants were a lawful claim against said fund to the extent of the moneys turned into it from the special fund. Yet, as the warrants show on their face the purposes for which they were drawn, I think it would be the duty of the treasurer to refuse payment out of the "general fund" of all warrants drawn on it for other than current use or support of the schools and especially so if there were any prior outstanding warrants or liabilities against the special fund so turned over, for I do not think the board of directors may destroy a fund, as against creditors, by turning it over bodily to another fund. If the treasurer could be required to pay out of the "general fund" any warrants drawn for the con-

struction of the school house or the installment of the heating plant, such payment, in any event, would be limited to the amount of the special fund applicable to such payment and turned into the "general fund."

Under sub-division 1 of section 33 of the School Code of 1897 as amended by section 6, p. 311, Laws of 1899, it seems to me that the county superintendent of schools might institute proceedings to prevent the misapplication of the district's funds by the payment of warrants out of moneys not applicable to such payment, but any citizen and taxpayer of the district would no doubt be a proper party to maintain such suit.

*Miller v. Sullivan,* 72 Pac. 1022.

Very truly yours, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, December 23, 1903.

Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:

DEAR SIR—A question submitted by the letter of W. E. Gamble is as follows:

"The question has been raised as to what time it is necessary to hold money in the treasurer's office to pay outstanding warrants after same warrants have been called. For instance, warrants issued in year 1892-3, called in 1898 and now up to this time not presented for payment, how long is it necessary to hold money to cancel such warrants, if there is a limit to this time, or can time outlaw such paper?"

In answer I have to say that under the statute there appears to be no time limit within which warrants must be presented for payment, after call. The only effect that a treasurer's call for a warrant has is to stop the running of interest.

Very truly yours, W. B. STRATTON,
Attorney General.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, January 11, 1904.

Hon. R. B. Bryan, Superintendent of Public Instruction, Olympia, Wash.:

DEAR SIR—You have submitted the following facts and requested our opinion thereon:

It is desired to form a consolidated district out of two school districts. The question submitted is, whether the petition to the county superintendent for the organization of the consolidated district shall be signed by five heads of families of each of the two districts, or whether the superintendent has jurisdiction to act if the petition is signed by five heads of families residing in one of the school districts only.

The law relating to the petition for the organization of consolidated districts is found in section 5, p. 162, Session Laws 1903, the same being section 12 of the School Code as compiled by the Superintendent of Public Instruction in 1903.

That section provides that "upon receipt of a petition signed by five heads of families of two or more adjoining districts now or hereafter organized, the county superintendent may organize and establish a consolidated district in the manner as provided for in a change of territory to another district. * * * "

If the legislature had intended that this petition must be signed by five heads of families residing in each of the adjoining districts, it would probably have said so in plain and unmistakeable terms, as it did in section 2, p. 159, Session Laws 1903, providing for the formation of union schools, where, respecting the petition, it is said: "Whenever the residents of two or more adjacent or contiguous school districts may wish to unite for the purpose of establishing a union graded school, the clerks of the districts, by order of the board of directors, shall, upon a written or printed petition of five or more heads of families of their respective districts, call a meeting of the voters, * * * " or, as was done by section 1, p. 18, Session Laws 1899, providing for the formation of new districts, where it is provided that "a petition in writing be made to the county superin-

tendent, signed by at least five heads of families residing within the boundaries of the proposed new district. * * * "

Section 12 of the School Code provides that the county superintendent may organize and establish a consolidated district in the same manner as provided for in a change of territory to another district. By reference to the manner of transferring territory from one district to another or enlarging the boundaries of any school district (Section 5, p. 157, Session Laws 1903) it will be found that "a petition in writing shall be presented to the county superintendent, signed by a majority of heads of families residing in the territory which it is proposed to transfer or include."

From a reading of section 12, *supra,* and a consideration of the other provisions named, I am of the opinion that the county superintendent has jurisdiction to act in the premises when there is presented to him a petition signed by five heads of families who reside any place within the territory proposed to be included in the consolidated district, and that it is not necessary that a petition shall be presented to him signed by five heads of families in each of the two districts.

Another question is submitted, namely, who is the head of the family as contemplated by the law respecting petitions? The letter of the school district submitted with your inquiry assumes that the head of the family must be either a person who has children of school age or who has children under the age of five years. I do not think either of these qualifications is necessary, and my view in this respect is based upon an opinion given May 11, 1897, by the then Attorney General to Mrs. Ada M. Harris, superintendent of schools of Pacific county, which opinion is found on page 74 of the Opinions of the Attorney General for the years 1897-8, where it is said:

**"In my opinion the 'head of the family,' as contemplated by the School Code, is not confined to one 'who is under legal obligations to provide for the support and education of persons dependent upon him. I think the head of a family contemplated is one who is under legal obligations to provide for the support or education of persons de-**

pendent upon him, and I am of the opinion that such a one is a competent party to a petition for the formation of a school district."

The School Code does not define what the head of a family is, but the act of the legislature of 1895, p. 112, Session Laws, the same being section 5238 of Ballinger's Code, defines the head of a family.

And in the 15 Am. & Eng. Enc. Law, p. 537, the phrase "head of a family" is interpreted as follows:

"According to the decided weight of authority, to constitute a 'family' within the meaning of the homestead exemption laws, there must at the least be a collection of persons living together under one head. The term does not embrace a single man without any person dependent upon him, or separate individuals who have no common home. This, however, is not alone enough. Every aggregation of individuals is not necessarily a family, though they may live together and though there may be a head. It is also necessary, by the weight of authority, that they shall be living together under such circumstances or conditions that the head is under either a legal or a natural obligation to support the other members, and the other members are dependent upon him for support."

In section 5238 of Ballinger's Code, the definition is:

"The phrase, 'head of the family,' as used in this chapter, includes within its meaning:

"1. The husband or wife, when the claimant is a married person;

"2. Every person who has residing on the premises with him or her, and under his or her care and maintenance, either:

"1. His or her minor child or the minor child of his or her deceased wife or husband;

"2. A minor brother or sister or the minor child of a deceased brother or sister;

"3. A father, mother, grandmother, or grandfather;

"4. The father, mother, grandfather, or grandmother of deceased husband or wife;

"5. An unmarried sister, or any other of the relatives mentioned in this section who have attained the age of majority, and are unable to take care of or support themselves."

If the interpretation as above given is followed, I believe there will be no difficulty in ascertaining who the head of a family is in any given case.

Very truly yours, W. B. STRATTON,
Attorney General.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, January 25, 1904.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR—You have submitted for the opinion of the Attorney General the following five questions, propounded by the superintendent of common schools of Whatcom county:

"1. If the new city is organized before the first week in March, do the directors hold office until next November? If so, how can six men act together as a board when the law calls for five?

"2. If the directors all go out of office, do I appoint a new board?

"3. What process is necessary on my part when the cities unite? Do I formally form a new district, according to section 4?

"4. According to section 75, it seems the two districts *must* become one. Is there any other law or ruling that applies?

"5. Does the proviso in section 76 apply to this case? If so, the first part of section 76 will be violated, for there are six men now acting as directors in the two districts."

From your letter and from a letter addressed to you by the superintendent of common schools of Whatcom county, submitted therewith, it appears that recently the cities of Whatcom and Fairhaven voted to unite, and by so doing created the city of Bellingham, with a population of more than ten thousand inhabitants. It is stated that "this creates a school district of a different class from either of the districts embracing the cities of Whatcom or Fairhaven, and raises some legal questions" which you do not feel competent to answer.

In reply thereto I beg to say:

As we understand the facts, the Whatcom and Fairhaven school districts, respectively, have heretofore been organized and transacting business as separate districts, each embracing a city of less than ten thousand inhabitants. Whether either of the cities of Whatcom or Fairhaven, prior to the consolidation of the two, had a population in excess of ten thousand does not appear. Recently the cities of Whatcom and Fairhaven were consolidated in manner provided by law, and it is conceded that, according to the census of 1900 or a special census taken since that time,

this consolidation created a city of more than ten thousand inhabitants.

Section 72 of the Code of Public Instruction, so far as material, provides:

"Each incorporated city or town in the state shall be comprised in one school district, and shall be under the control of one board of directors."

In section 12 of the Code, under the head of "Consolidated Districts," we find the following provision:

"When two or more school districts are consolidated by the provisions of this act, *or where two or more districts are consolidated by the uniting of two or more incorporated cities or towns*, as provided by law, all the directors of the several districts so consolidated shall constitute the board of directors of the new district so formed, and shall have all the powers and authority conferred by the laws of this state upon school district officers, until the next annual school election in said district, at which time there shall be elected three directors for said district, in the manner provided by law, who shall hold their respective offices as provided for the officers of new districts. * * * "

Section 15 of the Code, under the same title, so far as material, provides as follows:

"When two or more school districts shall be united by the provisions of this act, the boards of directors of the several districts shall, within thirty days thereafter, meet and organize the new board by the election of one of their number as president of the board. They shall elect one of their number as clerk for said district, and the clerks of the several districts so united shall deliver to said clerk all books, papers and records belonging to their respective offices. *The clerk of the new district thus formed shall immediately notify the county superintendent of the organization of the new district.*"

Section 12, under the same title, also contains the following provision:

"And the county superintendent of any county in which new districts are formed by the uniting of two or more districts, or by the incorporating of any city or town lying partly in two or more school districts, *shall upon being notified of such action by the board of directors of such new district*, proceed to designate such new districts by a number not the same as that of either component district or of any existing district, and to make a record of the boundaries thereof, and he shall certify such facts to the board of county commissioners, to the county treasurer, and to the clerk of the new district formed."

The language of section 72, above quoted, seems clearly and unequivocally to require the city of Bellingham to be

comprised in one school district, under the control of one board of directors. The language of article 2, under the heading "Consolidated Districts," from which we have freely quoted, seems to be clear and unambiguous. A resort to construction would seem to be unnecessary. It would seem that the officers involved in winding up the affairs of the two old districts and organizing the new Bellingham district are unnecessarily complicating the situation, from their view-point, in their reference to and attempt to apply the provisions of chapter 3 of title 3, under the heading "Cities of ten thousand or more inhabitants." The application of this chapter will be hereinafter discussed. For the present we will consider that no such provision exists.

It appears to be the plain duty of the two boards to meet together, organize as one board in the manner directed, of the clerks of the old districts to deliver the books, records, etc., to the clerk of the new, and of the clerk of the new district to immediately notify the county superintendent of the organization of the new district. Upon receipt of this notification it would seem to be the duty of the county superintendent, without the exercise of any discretion on his part as to whether he shall do so or not, to proceed to designate the new district by a number not the same as that of either component district or of any existing district, to make a record of the boundaries of the new district, and to certify the facts to the county commissioners, the county treasurer and the clerk of the new district. When this is done other matters and complications take care of themselves.

Under section 13 of the Code, the new district is entitled to the funds and property of the old districts; the county superintendent is to apportion all funds to the new district and certify such apportionment to the county treasurer. For the purpose of the apportionment the consolidated district or new district is to be credited with two thousand days' attendance in addition to the actual attendance, in-

stead of two thousand days to each of the old districts, as he would be required to do if the districts remained separate and distinct.

Under section 14, for the purpose of winding up the affairs of the old districts solely, each of the old school districts composing the consolidated district retains its corporate existence until its indebtedness has been paid in full, the officers of the new district having the power and it being made their duty to provide by appropriate levies upon the property situated in the old districts for the payment of indebtedness. When the payment of indebtednsss is fully accomplished, the clerk of the new district is required to enter that fact upon his records and report the same to the county superintendent.

Thus we have a perfectly formed consolidated or new district, with a single board of directors, having control and supervision of all school business within the territory of the old districts. The fact that the board of directors consists in this particular case at the present time of six members, and that deadlocks are liable to occur, does not argue against the organization and establishment of the new district in the manner clearly pointed out by law. Such inconveniences are matters for legislative consideration.

We will now consider how the situation is affected by chapter 3 of title 3, under the heading "Cities of ten thousand or more inhabitants." Before proceeding, however, it seems best to remark that with what we have already said and under the law which we have so far quoted, the district is left with a board of directors consisting of six members until the next annual school election in the district, at which time three directors are required to be elected, and if the city of Bellingham and the consolidated district had less than ten thousand inhabitants no difficulty would appear. On the first Saturday in March, 1904, three new directors would be elected.

According to the consus of 1900, however, and I assume according to any subsequent census taken for the purpose

of determining the population of the city of Bellingham, at the date of the consolidation, and, therefore, at the date of the organization of the new district, the city of Bellingham and the consolidated school district had a population in excess of ten thousand. The provisions of chapter 3 of title 3, under the heading "Cities of ten thousand or more inhabitants," would therefore immediately become operative, upon the consolidation of the two cities and upon the organization of the new district of Bellingham. At that instant the city of Bellingham was shown to have a population of ten thousand or more inhabitants, and according to section 75 of the Code, the consolidated school district would constitute one school district to be known by the name of the city and the number given to it by the county superintendent as hereinbefore pointed out. The board of directors constitutes a body corporate and possesses all the usual powers of corporations for public purposes.

It is provided in section 76 that in cities of ten thousand or more inhabitants the board of school directors shall consist of five members, who shall hold their offices for the term of three years. That section contains the following proviso:

"*Provided*, That the terms of members of the board of directors in any city to which the provisions of this title apply, shall serve the time for which they were elected, and if such time would otherwise elapse prior to the first Monday of January, then they shall respectively serve until the said first Monday of January next following the day when their terms would otherwise respectively expire."

We construe this proviso to mean that when the city of Bellingham is found, as conceded, to have a population of ten thousand or more inhabitants, and the school district is organized as hereinbefore indicated, the members of the school board then holding office will continue in office until the next regular election of school directors to be held in cities of ten thousand or more inhabitants and until their successors shall be elected and qualified—in this case, until the first Monday in January, 1905, and that their successors should be elected on the first Saturday of December, 1904.

Your first question, therefore, may be answered by saying simply that a new district should organize forthwith; that in the event of such organization the present directors will hold until the first Monday of January, 1905, and by adding that there would seem to be no good reason why the six men cannot act together as a board in the best interests of the new school district.

From the foregoing your second question would seem to require no answer.

Your third question may be answered by saying that the superintendent should follow the directions of the law in making a record of the boundaries of the district, giving it a number, etc., as hereinbefore pointed out. The superintendent does not formally organize a new district under section 4.

Your fourth question we think is fully answered, as we have said that the law requires the two districts to become one, and there is no law or ruling to the contrary that we know of.

In answer to your fifth question, it is only necessary to say that we have already pointed out wherein the proviso to section 76 applies. By giving the law this construction, we do not believe that the first part of 76 is violated on account of there being six acting directors. All of the provisions of the law must be must be construed together so as to harmonize them, if possible; the law plainly directs the six to act until such time as a board of five is elected to succeed them.

I hope I have fully comprehended the scope of your inquiries and fully answered them.

Very truly yours, E. W. Ross,
Assistant Attorney General.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, March 15, 1904.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.

DEAR SIR—You request the opinion of the Attorney General upon the following inquiries:

"1. Have directors power to abandon, even temporarily, school site No. 1 and hold school at No. 2 only?

"2. If directors have the right to abandon No. 1, have they authority to furnish transportation at expense of district to a school located on other than site selected by electors?

"3. If school is held at No. 2 for five months (and none at No. 1), will district be entitled to its apportionment of funds for ensuing year?

"4 If stated action of directors is illegal, what recourse have electors and patrons of school No. 1?"

It appears from a statement accompanying the queries that in a certain school district a school house and site was many years ago established and recognized by the officers and residents of the district as the place for holding school for all the children of school age in the district; that without any authority from the people, but merely as a temporary expedient, some time ago the board of directors rented a place and established a school at another place in the district; that recently and without authority of the electors of the district the present board of directors have abandoned the first school house and site and moved the school and all of the furniture and apparatus to the temporary location above referred to.

By section 40 of the Code of Public Instruction, fourth subdivision, boards of directors are authorized "to rent, repair, furnish and insure school houses," and by the fifth subdivision "to build or remove school houses, purchase or sell lots or other real estate when directed by a *vote* of the district to do so: *Provided*, That a school house already built shall not be removed, nor a new site for a school house be designated except when directed by a two-thirds vote of the electors of such district at an election to be held for that purpose, which election may be a special or general school election."

By section 44 directors are authorized to sell and convey any school house or lot directed to be sold by a vote of the district.

By section 156 it is provided that "any board of directors may, at its discretion, and shall, upon a petition of a majority of the legal voters of their district, call a special meeting of the voters of the district, to determine the length of time in excess of the minimum length of time prescribed by law that school shall be maintained in the district during the school year; to determine whether or not the district shall build one or more school houses; or to determine whether or not the district shall maintain one or more free kindergartens; or to determine whether or not the district shall sell any real or personal property belonging to the district, borrow money or establish and maintain a school district library."

By section 158 it is made the duty of every board of directors to carry out the directions of the electors of their district as expressed at any such meeting.

From these and other provisions of the school law, it seems clear to me that it was the intention of the legislature that the electors of the district should control the location of schools, school houses, length of terms school should be taught, etc., in their district, and that the directors should not be permitted, arbitrarily and without consent of the electors, to remove a school or a school house site. It is true that in the proviso to the fifth subdivision of section 40 the prohibition in language relates to the removal of a school *house* and to a new site for a school *house*, but to hold that this does not include the school and the place where the school is to be conducted for the instruction of the children, would be to attempt to retain the shadow and discard the substance.

I am therefore of the opinion that, without authority of the electors, the school directors are not empowered to abandon the original school site named in your first ques-

tion as No. 1 and to hold school at No. 2 only. This, I believe, answers your first question.

In answer to the second question, I will say that the twelfth subdivision of section 40 expressly authorizes the board of directors to provide and pay for transportation of children to and from school, and this authority is not controlled in any degree by the location of the place where the school is held.

In answer to your third question, I will say that the fact that no school is held at No. 1 would not deprive the district of its right to its proportion of school funds if school is held in the district for the minimum time prescribed by law.

In answer to your fourth question, I will merely suggest that the matter be referred to the prosecuting attorney of the county wherein the district is situated, and if he proceeds in the matter he will determine for himself the proper method of procedure.

Very truly yours, E. W. Ross,
Assistant Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, March 15, 1904.

Hon. W. G. Hartranft, Superintendent of Schools, Seattle, Wash.:

DEAR SIR — By your letter of the 10th inst. you request the opinion of the Attorney General as to whether a school district, having issued bonds for school purposes to the amount of $6,000, and afterwards having incorporated into and as a part of the district a portion of the territory of an adjoining district, may levy upon the annexed property a tax for the purpose of raising funds to redeem the bonds as they become due. In your inquiry is also involved the question, whether in such a case the county auditor should extend such a levy against all of the property of the district, including that annexed after the issue of the bonds, or only

against the property included in the district at the time of the issue of the bonds.

In reply thereto permit me to say:

An examination of the law convinces me that in the case stated all property included within the boundaries of the district at the time of the levy of the tax is subject to the payment of its proportion thereof. The auditor, therefore, should extend the levy against all property within the boundaries of the district at the time the levy is made.

There may be special cases where the rule announced would not be applicable, but your letter does not disclose such a case.

Very truly yours, E. W. Ross,
Assistant Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, March 18, 1904.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR—A day or so ago I received a letter from the county superintendent of Whitman county as follows:

"Mr. A. is a resident property owner in district No. 61, which is a bonded district. Owing to the great distance to the school in district No. 61, Mr. A. wishes his property transferred to another district, No. 13, which is much nearer for his children to attend.

"The question is: 1. Has the county superintendent a right to transfer the property of Mr. A. from the bonded district, No. 61, to the neighboring district, No. 13?

"2. District No. 61 also has a warrant indebtedness. In case the county superintendent can transfer Mr. A. from No. 61, what distribution of the warrant indebtedness should be made?

"3. If there is an adjustment of the indebtedness, should there be the consent of district No. 13 to the transfer? Should the statement of the adjustment of the indebtedness be included in the notice of hearing, and, in this case, would the failure of district No. 13 to object be sufficient evidence of consent to accept the distribution?"

It appears that this same matter was submitted to you January 12, 1904, and answered on the 16th of the same month to the effect that the county superintendent, under section 5 of the School Laws (Laws 1903, p. 158), has the

power to transfer the property of A. from bonded district No. 61 to district No. 13, and that under section 4 of the School Law (Laws of 1899, p. 18) the enlarged district shall be liable for a just proportion of the existing debts and liabilities of the district from which such territory is taken, provided that in such accounting one district shall not be charged with any debt or liability then existing, incurred in the purchase of any school district property, or in the purchase or construction of any buildings or permanent improvements then in use or under construction (or for which obligations have been incurred), which shall fall within and be retained by the other school district, but each district retaining such property shall be liable for the indebtedness therefor; provided further, that this shall not be construed to affect the rights of creditors; also that the county superintendent at the hearing, upon notice first given under said section 5, after taking testimony, shall make an equitable adjustment of all debts and liabilities between the old and enlarged district and the proportion and amount of such debts and liabilities to be paid by each district. Your ruling as above outlined, which in my opinion correctly states the law, answered the first two questions above set out. Sections 4 and 5 should be read together, and when so read the duties of the county superintendent seem plain.

The third question above was not submitted to you in the county superintendent's letter of January 12, 1904, but there is no law requiring the consent of district No. 13, for an appeal is allowed if it feels aggrieved; if it doesn't appeal, the order of the superintendent is final.

I do not think it is jurisdictional to state in the posted notice anything about adjustment of indebtedness between the districts. Interested parties or districts must take notice as a matter of law that at the hearing of the petition such indebtedness will be adjusted.

Very truly yours, W. B. STRATTON,
Attorney General.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, June 30, 1904.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR—There has been referred to this office a letter from the superintendent of schools of Yakima county, and also other inquiries, in which the question is asked whether or not the boards of school directors of school districts within this state are authorized to insure school buildings and other school property in mutual fire insurance companies organized and doing business under the laws of this state.

There are two laws upon the statute books under which mutual fire insurance companies may be organized. One of these laws is found on page 287 of the Laws of 1903, entitled "An act providing for the organization of mutual marine and fire insurance companies and regulating their management."

The insurance commissioner of the state advises me that there is no insurance company authorized to do business in the act just referred to. This being the case, it is unnecessary to decide at this time whether school property might be insured in companies organized under the above named act. It is also quite certain that no attempt will be made to form insurance companies under it.

The other mutual fire insurance company law is found commencing on page 146 of the Laws of 1903, and is entitled "An act providing for the incorporation and regulation of mutual fire insurance companies and associations, repealing chapter 132 of the Session Laws of 1899 and declaring an emergency." There are some corporations organized in this state under the act just mentioned. Section 1 provides the manner of the formation of such companies or associations. It will be noticed that the act itself does not provide what classes of property may be insured by such companies, but they are authorized to do a general fire insurance business. Section 1 of the act contains the following:

"The trustees of any such company shall adopt such by-laws as they may deem proper for the government of its officers and the conduct of its affairs, and said by-laws shall also provide for the liability of its members for the payment of losses and expenses: *Provided*, That such liability shall not be not be less than a sum equal to one annual premium, nor more than a sum equal to five times the amount of one annual premium, and such liability when so determined by the by-laws shall be the entire liability of each member."

From the above quoted provision it will be observed that the amount of the liability of the insured is not indefinite or uncertain—that is to say, the minimum annual premium and the maximum annual premium on each policy is absolutely fixed and definite.

The board of school directors are authorized by the laws of the state to insure school buildings and other school property (section 40, p. 175, Laws 1903). The statute does not provide the class of companies, whether mutual or otherwise, in which school property may be insured, nor does it make any limitations upon the powers of the school officers. It simply provides that they may insure the property. In the absence of any limitation upon the school officers in that respect, and the failure of the act providing for the formation of mutual fire insurance companies to limit the classes of property that may be insured, I can see no reason why school houses and other property may not be insured in corporations organized under the act of 1903 last referred to.

It has been said that the Attorney General of Indiana has held contrary to the above views, but an examination shows that the statute of Indiana providing for mutual fire insurance companies contains the following:

"Any number of persons, not less than ten, may form an incorporated company for the purpose of mutual insurance of the property of its members against loss by fire or damage by lightning; which property to be insured shall embrace dwelling houses, barns, accompanying outbuildings and their contents, farm implements, hay, grain, wool, and other farm products, livestock, wagons, harness, household goods, wearing apparel, provisions, musical instruments and libraries, such property being upon farms as farm property."

That statute names the classes of property that may be

insured, and under the well established doctrine that the express mention of one thing causes the exclusion of another it is quite plain that school houses could not be insured, but the statutes of Indiana and of Washington are so entirely different that the opinion of Attorney General Miller of Indiana has no application.

Nor can the opinion of the county attorney of one of the counties of California have any application here, for he evidently bases his conclusion upon the fact that the assessments which might be levied upon the school district to satisfy the losses are in the future and of uncertain amounts. Our statute, however, makes certain and definite the amount of annual premiums.

I am of the opinion that school directors may lawfully insure school property in a mutual fire insurance company or association organized under the said act of 1903. Whether it is good business to insure in such company or in an old line company is a matter left to their judgment.

Very truly yours, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, July 2, 1904.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR—There has been submitted for an opinion a certain application for a life diploma based upon a diploma from the State Normal School at Cheney, which was granted to a student who completed an advanced course in that institution. The normal school diploma was dated June 14, 1895, and entitled the holder thereof to teach in the public schools of this state for a period of five years. Though the five-year period expired on the 14th day of June, 1900, the application for the life diploma was not made or filed in your office until the month of December, 1903, about two years and a half after the expiration of the right to teach under the normal school diploma.

The question submitted is: May a life certificate be issued upon an application of this kind which is filed after the expiration of the period of five years during which the holder of the normal school diploma might teach under it?

Section 222 of the present School Code (Sec. 26, p. 325, Session Laws 1899) provides that "A student who completes any advanced course shall receive a diploma which shall entitle him to teach in the common schools of the state for a period of five years, and upon satisfactory evidence of having taught successfully for two years during the time for which the diploma was issued, shall receive a life diploma issued by the State Board of Education." It will be noticed that the statute does not require the application for a life diploma to be presented during the life of the normal school diploma, but provides generally that any student who completes any advanced course, etc., shall receive a life diploma issued by the State Board of Education. In the absence of some limitation in the statute, I should hesitate to say that this application was not presented in time.

I am of the opinion at least that if the application is presented within a reasonable time after the expiration of the right to teach under the normal school diploma, the Board of Education is authorized to issue the life diploma. In this case I do not think that two years and a half was unreasonable delay in the presentation of the application, and I am of the opinion that a life diploma should issue.

Yours truly, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, July 5, 1904.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR—I have the letter of the clerk of school district No. 16 of Whitman county, as follows:

"The board of directors of district No. 16 of Whitman county requests me as clerk of said board to get your ruling on the following,

relative to the payment of bonds: June 1, 1891, district No. 16 sold $800 of bonds (bearing seven per cent. interest) to the Chemical National Bank of New York. Said bonds are due and payable June 1, 1906 During the time said bonds have been running and bearing interest (from June 1, 1891, to June 1, 1904), there have been four different 'set-offs' of territory from the district as originally bonded, said territory taken away from originally bonded district No. 16 approximating something near in area the number of sections left to the district as it now stands.

"Now, the question is: Will district as it stood in 1891 (the time said bonds were given) have said bonds to pay, or will the district as it now stands (1904), reduced to one-half its original size, have the bonds to pay? If the district as it stood in 1891 has to pay the bonds, what is the way to proceed to compel those who formerly belonged and are now out to pay their part toward taking up said bonds?"

From the record concerning this school district which has been furnished me, I find that school district No. 16 was organized sometime prior to the year 1885. Subsequent to that time and prior to the issuance of the bonds in question, territory had a number of times been taken from district No. 16 as originally organized and transferred to new districts, or for the purpose of enlarging old ones. The bonds were issued in June, 1891. Subsequent to the last named date and, to-wit, on the 16th of February, 1901, something over a section of land was taken from school district No. 16 and transferred to a new district, which was numbered 155. Again, on the 7th day of March, 1903, certain other territory was taken from what remained of school district No. 16 and transferred to a new district then organized and numbered 162. At the time of the transfer of territory on February 16, 1901, the county superintendent made no equitable adjustment of all the debts and liabilities between the new district and school district No. 16, nor did he determine the proportionate amount of the debts and liabilities which should be paid by each of the districts. But at the time of the last transfer it appears that the superintendent made the following as a part of the order in the premises: "I find that No. 117 has a bonded indebtedness of $1250.00, but cash in the treasury to the amount of $1689.09, which exempts No. 162 from the payment of said bonds or interest. Also No. 22 is practically free from cur-

rent expense debt. Also No. 16 has a bond of $800 and a current debt of $282.55. Eight hundred dollars less $750.00, value of school property, plus $282.55, equals $332.55, which amount of debt is to be apportioned to No. 16 and 162 in the proportion of 51 to 8; or $244.30 of the current expense and $43.25 of the $50.00 of bond to be apportioned, to be paid by 16, and $38.25 of the current expense and $6.75 of the bond to be paid by 162."

Again, on the 19th of April, 1904, eighty acres of the remaining portion of district 16 was transferred to district No. 117, but no equitable division of the debts and liabilities appears to have been made at that time by the county superintendent.

All of the transfers of territory from school district 16 which are material were made subsequent to the passage of section 1, page 118, Session Laws of 1899, which, among other things, provides:

"And provided further, That at such hearing before the county superintendent he shall hear testimony offered by any person or school district interested and find and determine the amount of bonded and other indebtedness of all the school districts affected by the formation of the new district, and shall find and determine the amount and value of all school property retained by the old district or districts, and shall find and determine the amount, as nearly as may be, of the said outstanding indebtedness that was incurred for permanent improvements, and the amount incurred for current expenses, and shall make an equitable adjustment of all debts and liabilities between such new district and the old district or districts, and the proportion and amount of such debts and liabilities to be paid by each district, and the decision of said county superintendent shall be final unless appealed from within the time provided by law: And provided further, That every school district which shall be enlarged or created from territory taken from any other school district or school districts shall be liable for a just proportion of the existing debts and liabilities of the school district or school districts from which such territory shall be taken: Provided, That in such accounting one school district shall not be charged with any debt or liability then existing, incurred in the purchase of any school district property, or in the purchase or construction of any buildings or permanent improvements then in use or under construction (or for which obligations have been incurred), which shall fall within and be retained by the other school district, but each district retaining such property shall

be liable for the indebtedness therefor: Provided further, That this shall not be construed to affect the rights of creditors."

The treasurer of Whitman county, under date June 22, 1904, certifies that the records of his office show that the bonds in question were issued for "building and furnishing school house." This school house, I take it, is the same school house which was retained by school district No. 16 at the time of the several transfers of territory mentioned above, and that the school house and furnishings are still retained by the old district No. 16.

In view of the proviso contained in section 1, *supra*, "that in such accounting one school district shall not be charged with any debt or liability then existing, incurred in the purchase of any school district property or in the purchase or construction of any buildings or permanent improvements then in use or under construction (or for which obligations have been incurred) which fall within and be retained by the other school district, but each district retaining such property shall be liable for the indebtedness therefor," it seems quite clear that school district No. 16 as it now exists is liable for the payment of the entire bond issue, because the bonds were issued before the several transfers of the territory, and because the property purchased with the money realized from the sale of the bonds fell within and was retained by school district No. 16.

It also seems quite clear that the several districts to which territory was transferred from district No. 16 are not liable for the payment of any portion of the bonds. The general rule of law seems to be that where, upon the division of a municipality, the legislature does not prescribe any regulations for any apportionment of the property, or that the new corporation shall pay any portion of the debt of the old, the old corporation will hold all the corporate property within her new limits and be entitled to all the claims owing to the old corporation, and is responsible for all the debts of the corporation existing before and at the time of the division. This rule is borne out by the following author-

ities: 1 Dillon on Municipal Corporations, sections 186–189; 15 Am. & Eng. Enc. Law (1st. ed.), pp. 1023–1028; 21 Am. & Eng. Enc. Law (1st ed.), pp. 847, 848, 784, 793; *Mount Pleasant v. Beckwith*, 100 U. S. 514; *Commissioners of Laramie County v. Commissioners of Albany County*, 92 U. S. 307; *Livingstone v. School District No. 7*, 68 N. W. 167; *Board v. Central Township*, 42 N. E. 808; *Johnson v. San Diego*, 42 Pac. 249; *Owl Township v. Borough of Woodcliff*, 38 Atl. 685; *People ex rel. v. Board*, 41 Mich. 547; *Turnbull v. Board*, 45 Mich. 496; *People ex rel. v. Ryan*, 19 Mich. 203; *School District v. Miller*, 49 Ill. 494; *Butter v. Regents*, 31 Wis. 124; *Hughes v. Ewing*, 28 Pac. 1067; *Los Angeles County v. Orange County*, 32 Pac. 316; *Bridges v. School District*, 21 Wis. 353; *Board v. Thompson*, 10 C. C. A. 154; *Gilliam County v. Wasco County*, 13 Pac. 324; *State v. Clevenger*, 20 Am. St. Rep. 674.

This rule, to a certain extent at least, seems to have been altered by the act of 1899, above quoted. But prior to the passage of that act the superior court of Pacific county held that the rule above stated was in force in this state. The ruling was made in the case of *Marble Savings Bank v. Board of County Commissioners of Pacific County*, reported in the 23d Washington at page 766, in which the firm of Hewen & Stratton, of which I was then a member, were attorneys for plaintiff. In that case the owner of bonds brought an action against the county commissioners to require them to levy taxes to pay negotiable bonds of a certain school district which were owned by plaintiff. The school district intervened and set up as a defense the fact that after the bonds had been issued and sold certain territory of the district had been detached and transferred to other districts. The plaintiff demurred to that defense and the demurrer was sustained. Judgment was given for plaintiff and the defendant appealed to the supreme court, but abandoned the defense just mentioned, so that the supreme court did not rule upon the point.

Very truly yours, W. B. STRATTON,
Attorney General.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, August 8, 1904.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR — You have referred to the Attorney General, for his advice, the petitions and representations made by several school districts of the state in an endeavor to explain why the districts failed to hold five months' school during the last year and requesting you to exercise discretionary powers so as to relieve these districts from forfeiture of school apportionments.

In reply thereto, I am obliged to say: Section 70 of the Code of Public Instruction, in unambiguous language, requires each district to maintain school during at least five months of the year, and section 175 unequivocally provides that a school district not having maintained school for the minimum time required by law during the preceding school year, shall not be entitled to receive any apportionment of school moneys.

Much as we regret the situation in which these districts find themselves, according to your statement, I am unable to state that the law allows your office any discretion in the premises.

I herewith return the papers left by you.

Very truly yours, E. W. Ross,
Assistant Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, August 8, 1904.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR—I am in receipt of the following letter, signed by school clerk:

"HOQUIAM, WASH., Aug. 6, 1904.

"Hon. W. B. Stratton, Olympia, Wash.:

"DEAR SIR — In twp. 25, range 12, W. W. M., a new school district has been formed by order of the county superintendent of Jefferson county. This township was surveyed last summer, but has not yet been

inspected and opened for filing. Now can a school board levy a tax by law on this territory before it is accepted and opened for filing? And in what manner can said school funds be collected?

"An early reply will greatly aid us in maintaining a school here this year, where some of the children have been deprived for several years of school privileges."

In answer I have to say that I do not think there is any authority for assessing United States government land before the plat has been accepted. No final proof can be made upon the land before the plat is accepted, and, in fact, it cannot be filed upon at all before said time and until after notice of the filing has been given. This land belongs to the United States, and under our Revenue Act United States government land cannot be assessed until after final proof has been made.

Yours truly, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, August 10, 1904.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

I have your inquiry of today submitting the following questions propounded by the superintendent of schools of Pierce county, viz.:

"Is it necessary for a clerk of a school district to number a warrant prior to its indorsement by the county treasurer? Can a county treasurer number the warrants himself? Must a county treasurer indorse a warrant presented to him if the financial condition warrants same, even though the warrant has no number?"

In answer I have to say: That section 437 of Bal. Code provides:

"All * * * school warrants shall be paid according to their number, date and issue. * * * "

Section 59 of the School Code as compiled in 1903 provides:

"Fourth. He (the county treasurer) shall keep a register of all school district warrants presented to him for payment, which register

shall show the number of the warrant, the date of issue, and the date on which it was issued, the amount, and the purpose for which it was issued, to whom issued and to whom paid. * * * Whenever any school district warrant shall be presented to the county treasurer for payment, if properly signed, he shall pay the same out of the proper fund of the district upon which it was issued, if there be funds in his possession for that purpose; but if there be no funds in his possession for that purpose, he shall indorse upon the back of the warrant the words, 'Presented and not paid for want of funds,' * * * it is hereby made the duty of the county treasurer to advertise warrants which he is prepared to pay, in the same way as he is required to advertise county warrants. * * * '"

When the county treasurer calls for the payment of county warrants, he is required by section 437 of Bal. Code to give the number of the warrants in their order of issue in the published call. He is required to do this, under the section quoted from, when he calls for the payment of school district warrants. It is the duty of the school clerk "To issue and countersign all warrants ordered to be issued by the board of directors." And it is the duty of the school directors to issue and sign warrants (Sec. 2315, Bal. Code).

From the above provisions of the statute I think it is the duty of the school district clerk to number the warrants in the order of their date and issue, for if this is not done, how is the county treasurer to place the number of the warrant in his register when a warrant is presented for payment, and how is he to give the number of each warrant in his published notice or call? The treasurer, on the presentation of a warrant, is in no position to give the warrant a number, for he has no means of knowing whether or not there are other warrants of a prior date outstanding and not presented to him. I think the county treasurer could lawfully refuse to register a school district warrant which was presented to him without being numbered. He is no more required to register an un-numbered warrant than one which is not dated or which fails to comply with the statute in other important particulars; nor is he, in my opinion, required to indorse a warrant which is un-numbered, "Presented and not paid for want of funds." The

statute does not contemplate that the county treasurer shall number school district warrants; he takes the number from the face of the warrant when it is presented to him; the law has provided an officer to place the number on the warrant when it is issued.

Very truly, W. B. STRATTON,
Attorney General.

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[Supplemental to opinion of August 10, 1904.]

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, September 9, 1904.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.

DEAR SIR — My attention has been called to the fact that in my opinion of August 10 to you, on the question of the numbering of school district warrants, no reference was made to section 114 of the School Code as it was passed in 1897, which section provides that "all school warrants shall be paid in the order of their presentation to the county treasurer. * * * " This section no doubt repealed section 435 of Ballinger's Code so far as that section applied to school district warrants, and now school district warrants must be paid in the order of their presentation to the county treasurer and not according to their number, date and issue. However, I do not think that section 114 of the School Code or section 59 of the School Code contemplates that the county treasurer shall number the warrants. I still think that the warrants should be numbered before being presented to the county treasurer.

Yours truly, W. B. STRATTON,
Attorney General.

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STATE OF WASHINGTON.

# OFFICIAL OPINIONS

RELATING TO

# QUESTIONS OF SCHOOL LAW

BY THE

## ATTORNEY GENERAL

## PART III.

COMPILED BY

R. B. BRYAN,

*Superintendent of Public Instruction.*

MAY, 1906.

OLYMPIA, WASH.:
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# OPINIONS OF THE ATTORNEY GENERAL.

Opinion of Attorney General W. B. Stratton addressed to R. B. Bryan, Superintendent of Public Instruction, October 5, 1904.

It appears that an application has been made to you to grant to the applicant a common school certificate under § 141 of the School Code, being § 34, p. 183, Laws 1903. The applicant is a graduate of a reputable institution of learning, found upon the accredited list, whose requirements for graduation are equal to the requirements of the University of Washington. The applicant also holds a state certificate or diploma equal in requirements to the requirements of the State of Washington.

Said § 141 provides that "the state superintendent shall have power to grant common school certificates without examination to all applicants," who possess either of the qualifications above named, but said section contains the following proviso: "Provided, That an applicant shall pass an examination in State School Law and Constitution with a standing required for a first grade certificate."

The first question that arises is, have you the power to grant the common school certificate unless applicant has first passed the examination contemplated by the statute in State School Law and Constitution with a standing required for a first grade certificate? I think there is no doubt upon this question, for the statute to my mind is not susceptible of construction. Its meaning is plain and unambiguous. The common school certificate may not be granted unless the applicant shall first pass the examination in State School Law and Constitution. There is no power in the Superintendent of Public Instruction to grant the common school certificate in such cases unless the applicant has passed the examination in State School Law and Con-

stitution. The fact that the State Superintendent is satisfied that the applicant would be able to pass the examination does not answer the requirement of the statute. The *proviso* operates as an exception; that is to say, the common school certificate may be granted without examination generally, but not until the applicant has passed the examination in State School Law and Constitution.

The next question that arises is, before whom must the examination in State School Law and Constitution be taken? Has the Superintendent of Public Instruction any authority to examine the applicant on those subjects? Section 140 of the School Code (Laws 1903, p. 182) provides that there shall be held at the county seat of each county on the second Thursday of the months of May, August and November of each year an examination of applicants for teachers' certificates, which examination shall be conducted by the county superintendent according to the rules and regulations of the State Board of Education. The fourth subdivision of § 27 of the School Code (Laws 1903, p. 170) provides that it shall be the duty of the State Board of Education to prepare a uniform series of questions to be used by the county superintendents in the examination of teachers, and to determine rules and regulations for conducting the same. It is made the duty of the county superintendent to transmit the examination papers of all applicants for certificates to the Superintendent of Public Instruction, who examines and grades the same and issues certificates to those found entitled thereto. The Superintendent of Public Instruction is nowhere given the specific authority to examine applicants upon any subject; nor is he given power to prepare examination questions. This power resides wholly with the State Board of Education. Under the rules of the board a new set of questions is prepared for each regular examination conducted by the county superintendents.

By section 139 of the School Code (Laws 1903, p. 182) the State Board of Education may grant state certificates in cases therein named without examination, except an examination be-

fore the Board in theory and practice of teaching, psychology and history of education. The applicant in the present instance, however, could in no event secure a state certificate, because he has not taught in the public schools of this state at least nine months.

I do not find that the State Board of Education has authority to examine applicants, except in the case mentioned in § 139, and then only upon the subjects mentioned, namely, theory and practice of teaching, psychology and history of education. I do not think that the *proviso* quoted from § 141 was intended to confer upon the Superintendent of Public Instruction the power to examine the applicant upon State School Law and Constitution, but rather that it was the intention of the legislature that the applicant should take the examination in those studies in the regular way and at the regular time at the examinations in May, August and November conducted by the county superintendent upon questions prepared by the State Board of Education. Reading the School Law as a whole I think it quite plainly appears that the State Board of Education have the sole authority to prepare questions in any case. This necessary construction of the statutes may lead to hardships in individual cases, but on the other hand a different construction would place in the hands of the State Superintendent an authority not contemplated by law, and would no doubt call for frequent examinations by the State Superintendent upon State School Law and Constitution, which might interfere with the orderly conduct of the other business of his office.

Section 146 of the School Code of 1897 can not apply to the present case, because the applicant was a resident of the county in this state at the time of the last examination, and was not, so far as we know, unable on account of sickness or other unavoidable cause to attend the examination. Moreover, the temporary certificate provided for in § 146 is not a first grade certificate.

For the reasons stated I am of the opinion: First; that the State Superintendent has no authority to grant the common

school certificate without the examination in State School Law and Constitution first had; and, second, that that examination must be taken before the county superintendent.

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Opinion of Attorney-General W. B. Stratton, addressed to R. B. Bryan, Superintendent of Public Instruction, November 10, 1904.

The following is a letter recently received from the county superintendent of schools for Garfield county:

"Is it illegal to assess a man's property to build a school house in more than one district? For instance, Mr. B's property was in district 23 until last year. About two years ago district 23 built a new school house. Last year Mr. B's property was transferred to district 26, and now this district wishes to build a school house. Can they tax his property to build this second school house?"

In answer, I have to say that when that portion of district 23, which includes B's property, was transferred to district 26 and the school house built in school district 23 about two years ago fell within, and was retained by school district 23, the indebtedness incurred by school district 23 in the construction of the school house was not charged to school district 26 in the accounting between the two districts, so B's property will not be assessed for the purpose of paying for the construction of the school house in district 23, but will be propely chargeable in proportion to its value for the construction of the school house to be built in district 26. (§ 1, p. 118, Session Laws 1899; § 4, p. 1, Compiled School Laws 1903.)

Mr. "B" is not exempt from taxation in the matter of the payment of his portion of the cost of building school house in district number 26.

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Opinion of Attorney General W. B. Stratton, addressed to R. B. Bryan, Superintendent of Public Instruction, November 26, 1904.

I have the letter of R. D. Rhodes, dated November 16, referred to me a few days ago, as follows:

**"Our son is fourteen years of age and finished the eighth grade last spring and received his diploma. Not finding a suitable place for a boy so young away from home, we thought we would let him review the eighth grade this year, and as it is probable that a ninth grade will be put in here next year and as the law requires all children under fifteen years to attend school so many months in the year, we decided to send at home, but he was refused admittance. Therefore I write you for advice."**

In answer I beg to say the school at Bay Center is one of the common schools of the state. Section 64 of the School Code of 1897 provides that "every common school not otherwise provided for by law shall be open to the admission of children between the ages of six and twenty-one years residing in that school district." Section 43 of the same act provides that "any board of directors shall have power to make such by-laws for their own government and the government of the common schools under their charge as they deem expedient, not inconsistent with the provisions of this act or the instructions of the Superintendent of Public Instruction or the State Board of Education." Section 71 of the School Code (§ 24, p. 179, Laws 1903) provides that children between the ages of eight and fifteen years shall be sent to school at least four months each year. Provision is also made by law for grading the common schools of the state and a regular course of study is prescribed by the State Board of Education, and rules laid down for promotion from one grade to another and for graduation from the eighth grade. All of these laws must be construed together in order to arrive at the meaning of the whole act. The graduation of a pupil from the eighth grade is a finding of fact by the proper school authorities that the pupil has become proficient in all the studies of that grade, so proficient in fact that he is not required to take those studies again. I think it is not obligatory upon the school board to receive a pupil back into the eighth grade for the purpose of allowing him to review the studies in which he has already graduated. If there is no school in Bay Center higher than the eighth grade the parents would no doubt be relieved from the obligation to send the child to school four months in the year. It certainly was not

Opinion of Attorney General W. B. Stratton, addressed to R. B. Bryan, Superintendent of Public Instruction, December 22, 1904.

I am in receipt of your communication of December 12, enclosing papers on appeal to your office from the decision of J. Guy Lowman, superintendent of schools for Skagit county, Washington. As near as I am able to gather from the papers on appeal transmitted to this office by your office, the situation appears to be this: The directors of school district No. 22 of Skagit county, Washington, in violation of the provisions of § 2316, vol. 1, Bal. Code, have proceeded to contract with their district, and have rendered certain services for said district in connection with the erection of a school house for said district, and have thereafter issued to themselves school warrants or orders on the district for such services so performed, which said school order or warrants have been presented to the county treasurer of Skagit county, Washington, and by him duly paid and redeemed. The appellant, conceiving that it was the duty of the county school superintendent of Skagit county to take steps to recover these moneys from the directors of said district, has filed with said county superintendent a written showing of the facts and a demand that the county superintendent proceed to recover said moneys. The county superintendent, deeming that he had no jurisdiction, has refused to proceed, and from that refusal an appeal has been taken to your office.

Under the facts, as above stated, you are advised that neither your office nor that of the school superintendent of Skagit county, Washington, has any jurisdiction to recover the moneys in question for the district. In the opinion of this office suit to recover these moneys would have to be filed in the courts of Skagit county, Washington, said suit being on behalf of and in the name of the school district in question, and against the offending directors.

While the question is not involved in this appeal, it might be added that in the event of future transactions of this sort, suit would lie to restrain payment of any warrant or school order

issued as the result of such transaction, and that any citizen, who is a taxpayer of school district No. 22 of Skagit county, would be a competent party plaintiff in such suit.

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Opinion of Attorney General J. D. Atkinson, addressed to R. B. Bryan, Superintendent of Public Instruction, February 6, 1905.

In reply to your inquiry of a recent date, wherein you submit letters from Mr. S. C. Crooks, clerk of school district No. 55 of Yakima county, and of School Superintendent S. A. Dickey of Yakima county, wanting to know whether money can be legally transferred from a building fund to another fund, when such money came into the building fund being levied and raised for the purpose of building by due process of law, I will say that if the building fund has a surplusage of money which the directors do not want or need to use for the purpose of building or for the purpose of apparatus or furniture for the school building, it is my opinion that it cannot be legally transferred to any other fund, except that they could apply it on or to the bond interest fund and save levying so much bond interest taxes. There is no doubt in my mind but that this latter application could be made of this money legally.

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Opinion of Assistant Attorney General A. J. Falknor, addressed to R. B. Bryan, Superintendent of Public Instruction, February 13, 1905.

Your inquiry as to whether "In case of consolidation of two school districts, each of which has a school house, before consolidation, is it necessary to have a two-thirds vote in order to locate the new site in consolidated districts?"

The Attorney General concurs in the opinion expressed to him by your deputy, Prof. F. M. McCully, that the consolidated district is a new district and that under the powers conferred on the directors to build or remove school houses, that the site of

the school house in the newly consolidated district may be considered as an original location and therefore only a majority vote is required, not a two-thirds vote.

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Opinion of Assistant Attorney General A. J. Falknor, addressed to R. B. Bryan, Superintendent of Public Instruction, February 15, 1905.

In response to your request as to what board will adopt the books for Chehalis district, which does not maintain a high school under its own organization but assists in maintaining a union high school, the Attorney General reports that under section 306 of the Code of Public Instruction, the districts of the state for the purpose of the selection of school text books are divided into two classes: School districts of the first class, and school districts of the second class. The school districts in the first class consist of all of the school districts in the State of Washington which are maintaining and which shall hereafter establish and maintain a high school of not less than a two years' course of study. All other districts are placed in the second class. The text books for the use of the public schools in the districts of the first class are selected by the text book commission of such district, which consists of five persons, including the city superintendent, or if there be none then the principal of the high school, who shall be *ex-officio* chairman of the commission, two members of the city board of education or board of school directors of the district, and two lawfully qualified teachers engaged in teaching in such district.

The text book commission of districts of the second class consists of a county board of education, likewise composed of five persons, including the county superintendent of common schools, who shall be *ex-officio* president of the board, two lawfully qualified teachers and two citizen taxpayers of the county.

The law is not entirely clear as to which board selects the text books of a union high school and, indeed, three views in this respect might be advanced:

1. That in case a district assists in supporting a union high school it shall be by that fact included in the first class.

2. That the statutes contemplate that a district in order to be said to be maintaining a high school must do so independently of any other district and unless it does so must be placed in the second class.

3. That a union high school district may be considered under the law as a separate and distinct district, independent for the purpose of selecting books of the districts uniting to form such union high school, and if such union high school district is maintaining a high school of not less than a two years' course of study, it would fall in the first class.

The Attorney General is disposed to accept the third view. He believes it will harmonize with the legislative intent with reference to the selection of school text books and will cause less friction in the administration of the law between the two boards. He therefore advises you that a union high school district, which maintains a high school of not less than a two years' course of study, shall be construed under the law to fall within the first class with reference to the selection of text books; but with reference to the districts uniting to form a union high school, unless each district alone and independently of any other district supports a high school, that such district must fall within the second class and the text books up to those used in the union high school should be selected by the county board. The Attorney General's office is at a loss to understand how Chehalis district is included in a union high school. The law says, section 9 of the Code of Public Instruction:

**"The provisions of this section shall not apply to any school district that is already maintaining a high school or that is capable of maintaining a high school without uniting with any other district or with other districts, these facts to be determined by the county superintendent or in case of appeal by the county commissioners."**

If Chehalis district, however, has been permitted to unite with other districts to form a union high school, then Chehalis district cannot be said to be supporting or maintaining a high school and the text books from the first up to the eighth grade

or up to the high school grades should be selected by the county board, and the text books used in the high school course selected by a board appointed in accordance with the provisions for the selection of text books in districts of the first class. If the Chehalis district alone and unsupported and unassisted by other districts was supporting a high school, then the board selecting for the high school would select for all grades, but this does not appear to be the fact from your inquiry.

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Opinion of Attorney General J. D. Atkinson, addressed to R. B. Bryan, Superintendent of Public Instruction, March 22, 1905.

In reply to the inquiry of March 1, by Mr. J. O. Coleman, of Littlefalls, Washington, I will say that it is my opinion that under section 39 of the School Code directors-elect under all circumstances take their office on the fourth Monday next succeeding their election, and not immediately after election, as suggested by Mr. Coleman in the case of Mr. K. That is to say, that because Mr. G. was appointed to fill the vacancy, his term would not expire any earlier than if he had been regularly elected.

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Opinion of Attorney General J. D. Atkinson, addressed to R. B. Bryan, Superintendent of Public Instruction, March 22, 1905.

In reply to the letter of inquiry of March 9 from Mr. H. Schroeder of school district 28, Whatcom county, I will say that in order for the district to get title to property which is in the possession of a minor it would not be sufficient for the minor to make a deed, having the consent of the parents. A guardian of estate to the minor would have to be appointed by the court, for the purpose of conveying the property, and that guardian would, of course, preferably be his father. The district attorney of Whatcom county would be the proper person to assist the directors of school district 28 in this matter, as that comes in the line of the work of the prosecuting attorney.

Opinion of Attorney General J. D. Atkinson, addressed to R. B. Bryan, Superintendent of Public Instruction, March 22, 1905.

In reply to the letter of March 11 from Josephine Grim, county superintendent of schools of Ferry county, I will say that when an appeal is taken from a county superintendent's decision to the board of county commissioners, the commissioners would have the right to make changes other than those actually passed upon by the county superintendent, if such boundaries were not satisfactory to the patrons of the district, and the commissioners should see fit so to do. They should, of course, render their decisions upon the same petition in whole, as the one upon which the county superintendent rendered his decision. They would have the right, however, to summon whatever witnesses were desired from the district in order to get full and further information to assist them in making up their decisions.

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Opinion of Assistant Attorney General A. J. Falknor, addressed to R. B. Bryan, Superintendent of Public Instruction, April 14, 1905.

Yours of April 11, 1905, addressed to the Attorney General, received. You submit three questions:

"1. As to whether or not the boards whose duty it is to adopt text books for the public schools of Washington have the power to exact of the publishers whose books are adopted for the next five years, a bond for the faithful performance of any contract, not contrary to the law, that may be exacted by such adopting board, and it has been requested that I submit this question for your opinion. The law referred to will be found beginning at Section 306, on page 121 of the School Code of 1903, and I know of no other specific statutes bearing on the subject.

"2. As to whether adoptions made by the boards, as provided for in said law, made prior to the present time, remain in full force and effect for the full period of five years from the date of adoption, or, if not, do such books referred to as supplemental books remain in full force after the expiration of the time of their adoption?

"3. If such supplemental books do not remain as supplemental books after the close of the present school year, do they become the regularly adopted text books for the full term of five years from and after their adoption?"

In answer to the first question, the Attorney General advises you that while there is some controversy as to the validity of a voluntary bond, yet he is disposed to the view that if parties furnishing text books see fit to enter into a bond with the boards, for the faithful performance of such contracts, that such bonds are valid and enforcible in court. (See cases referred to in "c" "d" "o" "p" "r" under section 40½, volume 8, American Digest, pages 58 and 59).

In reference to the second question the statute reads as follows:

**"But nothing in this act or any other law shall be so construed as to prevent the text book commission of any school district of the first class from using or introducing at any time, any supplementary or additional books which may from time to time be deemed necessary in order to maintain the highest standard of excellence in the schools of the district."**

The Attorney General is of the opinion that the adoption of supplemental books does not remain in force after the expiration of the time for which such books have been adopted.

With reference to interrogatory number three, the Attorney General advises you that when books are adopted as supplemental books they do not thereafter become text books, unless adopted as text books.

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Opinion of Assistant Attorney General A. J. Falknor, addressed to R. B. Bryan, Superintendent of Public Instruction, May 5, 1905.

The Attorney General acknowledges receipt of your interrogatories, reading as follows:

**"1. Has a county board authority to adopt a special text in business forms as supplementary to the advanced arithmetic?**

**"2. Has a county board authority to adopt a supplementary text book in civics for the seventh and eighth grades and require pupils to buy the same?**

**"3. Can a county board adopt a text book in language for the third grade and require pupils to buy the same?"**

The law upon this subject is found in the act passed at the extra session of the legislature of 1901 in sections 307 and 311

of the Code of Public Instruction of 1903. In section 307 of said compilation with reference to the text book commission of school districts of the first class, the law says:

"Said text book commission shall have power to select text books for the use in the public schools of the school district for which it is appointed, and it shall be the duty of the board of directors to require the introduction and use of all text books lawfully adopted for use in their respective districts. The text books selected by the commission shall cover such branches and studies as are required to be taught in like schools, by the state course of study issued by the State Superintendent of Public Instruction, and as are required to be taught by the laws of the state of Washington. * * * But nothing in this act or any other law shall be so construed as to prevent the text book commission of any school district of the first class from using or introducing at any time any supplementary or additional books which may from time to time be deemed necessary in order to maintain the highest standard of excellence in the schools of the district."

In section 311 of said compilation it is provided that the county board of education for districts of the second class shall select text books for the use of the school districts of such class in their county and that any text books so selected shall remain in use until the same shall be displaced, but that no book selected and introduced into the schools shall be changed within five years from the date of introduction. Said section also provides:

"The county board of education or the officers of any school district of the second class, shall have power to select, introduce and use additional books at any time when they deem it necessary, in order to establish and maintain the highest standard of excellence in their schools. * * * *Provided*, That the Superintendent of Public Instruction shall have power and it shall be his duty to prescribe a uniform course of study for all schools of the second class."

Under the provisions of the laws cited, whether the district be of the first or the second class, it seems clear that the respective boards have power to select, introduce and use additional and supplementary books of any kind on any of the subjects required to be taught when such board deem it necessary in order to establish and maintain the highest standard of excellence in the school. This answers interrogatory 1 in the affirmative.

The law provides, as heretofore set out, that the county board of education in districts of the second class, shall have power to select, introduce and use additional and supplementary text books at any time when it may deem it necessary in order to maintain the highest standard of excellence in the schools. The same section also provides that the Superintendent of Public Instruction shall have power and it shall be his duty to prescribe a uniform course of study for the schools of the second class. That is, the Superintendent of Public Instruction prepares a uniform course of study indicating such branches and studies and times as are required to be taught in the schools. The Board of Education selects the text books covering such subjects. The course of study prescribed by the Superintendent of Public Instruction indicates civics as one of the subjects to be taught. It would be, therefore, within the power of the Board of Education to select, introduce and use additional and supplementary books on the question of civics, and, as heretofore indicated in this opinion, unless the Board would have the right to enforce the use of such supplementary books the power conferred upon them to adopt the same would become a nullity. Interrogatory number 2, then, is answered also in the affirmative.

The course of study prescribed by the Superintendent of Public Instruction in the third grade provides for the teaching of language both oral and written. As the course prescribes written language, I am of the opinion that a county board may adopt and require pupils to buy a text book in language for the third grade. This answers the third question also in the affirmative.

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Opinion of Attorney General J. D. Atkinson, addressed to R. B. Bryan, Superintendent of Public Instruction, June 20, 1905.

In reply to your inquiry of June 7, I will say that after a somewhat careful examination of the law, it is my opinion that if a county adopts a certain text book for use in second class districts for five years, it does bind all such districts to the use of

this book for the entire time of contract—unless the contract otherwise provides—notwithstanding the fact, that later the disrict may have the required number of grades to make it first class; provided, that a district, after becoming first class contains the grades, and can reasonably use the same text books as were established and used in the grades when the district was in the second class. If new or extra grades are established in the first class district over and above those used by the district when the second class, the contracts given for the district of the second class would not cover text books for such extra grades, by reason of the district changing from second to first class; the text book commission established for the district of the first class would have power to adopt books for the new grades established by reason of the district having changed from second class to first class.

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Opinion of Attorney General J. D. Atkinson, addressed to R. B. Bryan, Superintendent of Public Instruction, June 20, 1905.

In reply to your inquiry of June 7, I will say that after a careful examination of the statutes, it is my opinion that the law intends that a school month shall be interpreted to mean that school shall be taught twenty days, so far as that is possible under ordinary circumstances; but that if the weather on any of those days should be too bad, for instance, too bitterly cold, the law should be construed somewhat liberally, in that a bitterly cold day would not have to be made up by an extra day's teaching on the part of the teacher.

As to holidays, the School Code, page 35, or section 21, page 178 of the Session Laws of 1903, provides as follows:

"No teacher shall be required to teach school on Saturdays or on Thanksgiving day, Christmas, New Year's, or the Fourth of July; *Provided*, That no deduction from the teacher's time or salary shall be made, by reason of the fact that a school day happens to be one of the days referred to in this section, as a day on which school shall not be taught."

Under section 4709 of Ballinger's Code, which reads as follows:

"The following days are legal holidays, namely: Sunday; the first day of January, commonly called New Year's day; the fourth day of July; the twenty-second day of February; the twenty-fifth day of December; commonly called Christmas day; and any day designated by public proclamation of the chief executive of the state, as a holiday, or as a day of thanksgiving; the day known and observed as Memorial or Decoration day; and the day on which a general election is held throughout the state."

Memorial or Decoration Day and the 22nd of February are also legal holidays, as well as any day designated by public proclamation of the chief executive of the state, together with the day on which a general election is held throughout the state. If any school board desires to dismiss schools on Memorial day or the 22nd day of February, or on any holiday not designated in the School Code as referred to above, such action would certainly be valid; but under the section of the Code of Public Instruction above referred to, I do not believe that it was the intention of the legislature or of the law, that teachers shall receive pay for any holiday upon which school was not held, other than those mentioned in said school law, quoted in the first instance above.

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Opinion of Attorney General J. D. Atkinson, addressed to R. B. Bryan, Superintendent of Public Instruction, July 7, 1905.

In reply to your inquiry of June 29, reading as follows:

"The Code of Public Instruction of this state provides that the board of directors shall consist of three members, one of whom shall be chairman and another clerk, both chosen by the board of directors. A question has arisen as to whether a director who is acting as clerk, and whose term as director expires on the fourth Monday after the annual school election, should continue to act as clerk until the first Monday in August next following, or whether upon the expiration of his term as director he ceases to be clerk of his district, in which event a clerk should be chosen by the directors from among their members to fill the office during the period between the fourth Monday succeeding the annual school election.

Your official opinion on the question will be highly appreciated."

I will say that section 48, page 31, of the School Code recites that immediately upon assembling on the fourth Monday next succeeding their election, the directors shall elect one of their number as clerk, who shall serve one year, and until his successor is elected, or until he shall be removed for cause by the board of directors. Said clerk shall enter upon the duties of his office on the first Monday in August of each year: *Provided,* That any clerk elected to fill a vacancy caused by the removal of his predecessor or otherwise, shall enter upon the discharge of his duties immediately upon his election.

I take the law to mean, in accordance with this section just recited, that the school clerk is to be, at the same time he is acting clerk, a member of the board of directors. Therefore, in answer to your inquiry, I will say that it is my opinion that a director whose term has expired on the fourth Monday, after the annual school election, cannot continue to act as clerk thereafter, and that upon the expiration of his term as director, he ceases to be clerk of his district, in which event a clerk must be chosen by the directors from among their members to fill the office until the period between the fourth Monday succeeding the annual school election, and the first Monday in August succeeding such annual school election.

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Opinion of Assistant Attorney General Robert F. Booth, addressed to R. B. Bryan, Superintendent of Public Instruction, July 12, 1905.

The following communication has been received from your office:

"Superintendent Benbow, of Pierce county, submits to me a question in regard to the formation of a 'consolidated' school district. One of the districts of which the proposed consolidation is to embrace lies in Kitsap county, while the other two districts lie in Pierce county. The question arises as to the authority of county superintendents to form consolidated districts by uniting of districts lying in two or more counties. Have they such authority or have they not, under existing laws of this state?"

Practically the same question as above set forth was passed

upon by the Hon. W. B. Stratton, former Attorney General, January 30, 1901. The question was presented to Mr. Stratton as to whether or not a union district could be made from districts in different counties. Among other things, Mr. Stratton said:

"It seems plain, from a reading of the entire Code of Public Instruction, that the only case in which contiguous territory lying in different counties may be placed in one district is in the formation of new districts called joint districts, under sections 16, 17 and 18, Code of Public Instruction. Section 10 provides that notification of the formation of the union districts shall be given to the county superintendent, presumably of the county comprising the new district, whose duty it shall be to designate such union district by number, as 'Union District No. ——, ———— County,' and to notify the county treasurer of the organization of such new district. The directors and clerk of the new district are required to file their oaths of office and certificates of election only in one county, and to file their signature with the treasurer of but one county, and to report to one county superintendent. The sections relating to the formation of union districts are entirely silent as to which county the apportionment of the state school funds shall be paid to. If it had been the intention to allow the formation of union districts in different counties, some one of the counties should have been designated to receive said apportionment.

"The section relating to districts for union or graded schools seems to contemplate the union only of districts in the same county, for they do not provide for conditions which would naturally arise from the union of districts in different counties."

The same reasoning applies with equal force to the formation of a consolidated school district. I am therefore of the opinion that there is no authority of law for the formation of consolidated districts by the uniting of districts lying in two or more counties.

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Opinion of Attorney General J. D. Atkinson, addressed to R. B. Bryan, Superintendent of Public Instruction, August 2, 1905.

In reply to your request for an opinion on the subject in letter submitted by County Superintendent John E. Porter of Wenatchee, which reads as follows:

"Your opinion regarding consolidation at hand. Will you please get an opinion from the Attorney General on the following questions:

**(1st) Districts No. 1 and No. 2 are Union High School No. 5; Districts No. 1 consolidates with District No. 3; what is the effect upon the Union High School No. 5? Does the Union High School continue or does it cease to exist? (2nd) Can a consolidated district unite with another district and form a Union High School district?"**

I will say in answer to question No. 1, that when districts No. 1 and No. 2 compose a union high school No. 5, and they as such union high school unite with district No. 3, the union high school would still be in existence, and would be considered simply to be enlarged by the addition of the territory of district No. 3, and in that event the union high school still continues and does not cease to exist.

If district No. 2 was separated at the time and did not accompany district No. 1 in the consolidation with district No. 3, it is my opinion that district No. 1 at the time being in the combination that composes the union high school No. 5 or really being a part of the union high school No. 5, that it would be considered a union high school still and that by consolidation with district No. 3 union high school No. 5 would still in that event continue as the same and still be in existence and be entitled to appropriations the same as formerly.

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Opinion of Assistant Attorney General A. J. Falkner, addressed to R. B. Bryan, Superintendent of Public Instruction, August 12, 1905.

In reply to your question reading as follows:

**"Has a county board of education authority to adopt a series of this description (being Cooley's Primary Language Series) as a text book under the law governing the adoption and use of text books in this state, and to enforce its use in districts of the second class through its purchase by the boards of directors of such districts?"**

The county board of education selects the text books for the use of all the school districts of the second class. The term text book has received by the courts a very liberal interpretation:

**"In Affholder v. State, 51 Neb. 91, it was said: 'We do not think the term *text books* should be given a technical meaning, but that it is**

**comprehensive enough to and does include globes, maps, charts, pens, ink, paper, etc., and all other apparatus and appliances which are proper to be used in the schools in instructing the youth."**

Therefore, such language series could be included within the term text books. It appears, however, to be the theory of the school law of this state that the county board of education shall select the text books and the directors shall enforce the use of the same by requiring the pupils to purchase the text books selected. I am not aware of any law that would permit the county board of education to select text books and then to require the board of directors to purchase the same, except in districts providing free text books. The law gives to the directors of the district the power to purchase maps, charts and other apparatus as may have the written approval of the county school superintendent, and therefore, we are of the opinion that, except in districts providing free text books, the county board of education could not adopt text books and require the districts to purchase the same, and while it would be within the power of the county board of education to adopt the series referred to as a text book, it would not be within their power to enforce its use in the district by requiring the purchase of the same by the board of directors of such districts.

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Opinion of Attorney General J. D. Atkinson, addressed to R. B. Bryan, Superintendent of Public Instruction, August 29, 1905.

In reply to your favor of a recent date, I will say that it is my opinion, without going into any lengthy statement of the matter, that any board of school directors in this state, which desires to receive and pay for a State School journal, of the character which you describe, which publishes a regular department of news, legal and otherwise, that is of value to directors of school districts, may properly and legally subscribe to and pay for such journal or journals, out of the current or general school funds of such districts, as, and in the manner that other current expenses are paid.

Opinion of Assistant Attorney General A. J. Falknor, addressed to R. B. Bryan, Superintendent of Public Instruction, September 7, 1905.

The communication handed to you and referred to us, received. Such communication reads as follows:

"Miss ———— spent last year doing our eighth grade work. She took the May examination and receiving the necessary grades a diploma was issued to her. When she presented it to her teacher for his signature he refused to sign it as did the proper school authorities, claiming that she had not completed the work satisfactorily.

In a circular from your office you say among other things, that no eighth grade diploma would be issued to any applicant who did not bring a statement from her teacher stating that the work had been regulated and satisfactorily completed. This of course she did not have. Is her paper an eighth grade diploma in the meaning of the law? Can she compel us to admit her to our high school?"

Section 260 of the Code of Public Instruction provides that it shall be the duty of the Superintendent of Public Instruction, at such times as he may deem advisable, not oftener than three times each year, first, to prepare questions for the use in the examination of the pupils of the schools of this state completing the grammar school course of study; second, to prescribe uniform rules and regulations for the conduct of such examinations; third, to grant certificates of graduation to pupils successfully passing such examinations according to the standard prescribed by the State Board of Education. The proviso of this section entitles any resident holder of such certificate to entrance into any high school in this state without further examination or charge. The subsequent sections, 262 and 263 of the Code of Public Instruction, provide that the county superintendent shall report to the Superintendent of Public Instruction, within ten days after the meeting of the county board of education, the names of all pupils successfully passing an examination, together with their respective standings and grades in the several prescribed subjects and such other facts relating to said pupils or said examination as the Superintendent of Public Instruction may require.

If the said pupils pass such examination according to the

standard prescribed by the State Board of Education, it shall be the duty of the Superintendent of Public Instruction to grant certificates to them. The ministerial act of granting the certificates or diplomas rests with the Superintendent of Public Instruction. No other signature is required. In this instance it appears that the pupil took the examination, received the necessary grades and a diploma was issued to her. The issuance of the diploma was the final act. It was not necessary for her to present the diploma to her teacher or anybody else for signature. The signature of the Superintendent of Public Instruction is the only one required by law, and as it appears that she holds a diploma signed by the proper authority, *prima facie* at least, she is entitled to be admitted to the high school.

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Opinion of Attorney General J. D. Atkinson, addressed to R. B. Bryan, Superintendent of Public Instruction, September 18, 1905.

In answer to your request for an opinion, in reply to an inquiry from T. P. Storey, county superintendent of King county schools, which letter of inquiry reads as follows:

"The county board of education of King county adopted Doub's U. S. History as a basic text in history and civics and McMaster's U. S. History as a supplementary book in history. What discretion have the directors in using or not using the books as adopted?. What penalty, if any, is there for refusing or neglecting to use the books as adopted? I enclose a letter from one of the school district clerks of this county; please tell me how to answer it. I also enclose the circular referred to. I also ask you to examine the book and see if it is a book that should be excluded from the public schools."

I will say that section 2375 of Supplement to Ballinger's Code, which is taken from the Session Laws of 1901, reads in part as follows:

"The county board of education in each county of this state, shall, between the first day of April and the first day of July of each year when any text books are to be selected, publish an advertisement in a newspaper of general circulation in said county to the effect that said county board of education will on a day named therein select text books for the use of all the school districts of the second class in said county,

and invite proposals for the furnishing of such books, the proposals to state an exchange price, a wholesale price and a retail price at which the proposer will furnish books for the schools of all districts of the second class during the period of their use in the schools of such districts. Any text book selected for the use in the schools shall remain in use until the same shall be displaced or replaced by the county board of education; but no book selected and introduced into the schools shall in any event be changed within five years from the date of introduction. The county board of education or the officers of any school district of the second class, shall have power to select, introduce and use additional and supplementary books at any time, when they deem it necessary in order to establish and maintain the highest standard of excellence in their schools."

Section 2311 of the same work provides, under the powers and duties of school districts that every board of directors shall have power and it shall be their duty, among other things, to exclude from schools and school libraries, all books, tracts, papers and other publications of an immoral or pernicious tendency or of a sectarian or partisan character.

In construing the law as above recited, for the adoption of text books, in the counties in this state, it must be considered and concluded that ordinarily the books adopted by a county board of education, under this law must be used by the schools regularly for five years, during the period for which they were adopted. It will also be considered that the county board of education or the officers of any school district of the second class, shall have power to select, introduce and use additional and supplementary books at any time, when they deem it necessary to keep up a high standard of excellence in their school.

The supreme court of this state, in Washington Reports, volume 36, cases of *Westland Publishing Company vs. Royal, idem, Wagner vs. Royal,* have decided in substance, that where a text book is regularly adopted for five years by a board of education, that such text book must ordinarily be used in every school for which it was adopted, to the extent, at least, that each pupil would be expected to have purchased such book, and that when that is done, the contractor or book publishing firm, having only a pecuniary interest in the contract of adoption, could not have any complaints or claim for damages, as against

any further or co-ordinate use of supplementary text books adopted in accordance with the law.

We would, therefore, understand that the supreme court of this state has virtually settled the matter, that where a board of education has adopted a book, in accordance with the provisions of law, under which such board makes its adoption, it must be purchased and be in the hands of the pupils for use, but it is our opinion that after that is done, the extent to which the basic text book is used, or not used, and the supplementary book adopted substituted for the basic text, is largely a matter of discretion of the teacher and the school board of the district. There may enter into this also the discretion of the State Superintendent of Public Instruction and that of the county superintendent of schools, who have more or less in charge officially, the carrying out and enforcing of the course of study adopted for the schools of the state. It will be recognized that there is a provision of law by which the superintendent of schools may withhold a portion of the State School funds from a county, or district, if the course of study is not according to his idea properly taught and enforced and carried out in any particular district or districts.

If, however, any text book adopted by a county board of education should, after adoption, be thought and generally accepted by the school board and the teachers, and the people at large, to be weak, worthless or pernicious and partisan, as a means of teaching virtue, morals and patriotism, and a district refuse to use it, and a test case were brought to bring the matter into court, and it were proven—which would be a matter of fact and not of law for a jury to decide—that such text book is of a sectarian, pernicious or partisan character, in the matter of teaching the proper spirit of our institutions as generally understood by the people of the commonwealth, the court, in my opinion, would be likely to hold that the use of such book is contrary to the intention of the law, as set forth in section 2311 of Ballinger's Supplementary Code, mentioned above, wherein it is within the power and duty of school directors to exclude from schools all such books and publications as are

of a pernicious or partisan character, and that the publishers could not enforce their contract if they so attempted, on the ground that directors' right to exclude partisan books, would lie under and precede the right of county board of education to make a contract for a book that is proven (in court) pernicious or partisan, and in its use contrary to the underlying ideas and principles of our Constitution and American institutions.

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Opinion of Attorney General J. D. Atkinson, addressed to City Superintendent Hughes of Bellingham, October 10, 1905.

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In reply to your first question, your city board of health in Bellingham, being a city of over 10,000 inhabitants, under the statutes of this state as set forth in section 92, subdivision 9 of the School Code, has the right to issue an order that all pupils shall be vaccinated, and that you shall exclude from school all pupils who are not or refuse to be vaccinated. This law is made all the stronger by the fact that you seem to have what would be called an epidemic of smallpox, but regardless of that, they, under the statutes, have the right to issue such an order as referred to above.

In reply to your second question, it is your duty, as superintendent of the city schools, to enforce such order of the board.

In reply to your third question, as to what bearing, if any, the order referred to above has on the law requiring attendance the full time school is in session, I will say that if the law excludes pupils from the school, which would be the case where children refuse to be vaccinated, the law requiring attendance the full time school is in session would not be in force. That is, the previous health law would take precedence, and when a pupil is excluded under that law, he would not and could not be expected to be in attendance at school. If my reply to this latter question is not full enough, and you will let me know, I will try to make it clearer and fuller.

Opinion of Assistant Attorney General A. J. Falknor, addressed to R. B. Bryan, Superintendent of Public Instruction, October 12, 1905.

Your communications concerning the right of school district directors to insure the school property, and also inquiring if the said directors may insure in a mutual company, received.

The board of directors have the power to insure school houses. See section 40, Code of Public Instruction.

The law does not limit the directors to any class of insurance companies. The character of the company in which the directors insure the school house would depend upon the judgment of the directors. They would be expected to exercise the same prudent care in insuring the school house that an individual would in insuring his own property. As mutual companies are authorized to do business in this state, if in the judgment of the directors they desire to insure in such companies, it is the opinion of the Attorney General that they could do so. In a letter addressed to the Deputy Insurance Commissioner, under date of March 7, 1905, from this office, it was stated:

"That when the trustees have, as provided by law in the by-laws declared that one annual premium shall be the extent of the liability of each member, then in case of a heavy loss the policy holder who has paid a cash premium in lieu of assessments would not be liable for further assessment. It would be possible, however, for the trustees, under the law, to make the liability of the policy holders an amount equal to five annual premiums. If the company has by its by-laws through its trustees declared that one annual premium shall be the extent of the liability, then in case cash premiums are collected in lieu of assessments there is no further liability. A policy holder, to be sure of this point, should know what the by-laws of the company are."

This, we believe, answers your inquiries.

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Opinion of Attorney General J. D. Atkinson, addresesd to R. B. Bryan, Superintendent of Public Instruction, October 13, 1905.

In reply to your inquiry of October 9, which reads as follows:

"1. Who, if any one, has the power to revoke the diplomas granted to graduates of the normal department of our State University?

**"2. Has the Superintendent of Public Instruction, for the offenses mentioned in sections 168 and 259, or for any other offenses that merit the revocation of a license to teach, the authority to revoke certificates or diplomas of any of the classes or kinds to which I have referred, or is his authority limited by the provisions of Sec. 148 to those certificates which are granted by him."**

I will say that section 148 of the Code of Public Instruction, provides that any certificate may be revoked for cause by the authority granting it. This unquestionably confers upon the State Superintendent of Public Instruction the power to revoke any common school certificate, said certificate being granted by the Superintendent of Public Instruction only.

Section 168, of the same Code provides for the revocation of certificates for non-attendance at teachers' institute, and this seems to make the sweeping provision that any class or kind of certificates may be revoked by the Superintendent of Public Instruction, in case the holder has absented himself from a teachers' institute held in the county in which said teacher is employed; unless such teacher shall furnish to the Superintendent of Public Instruction a good and sufficient excuse for such non-attendance.

Section 259 provides for the revocation of certificates for the violation of contracts to teach, and indicates that any class or kind of certificate shall be revoked by the Superintendent of Public Instruction in case the holder is found guilty of the offense alluded to above.

Section 222, as amended by section 4, chapter 85 of the Laws of 1905, provides that any certificate or life diploma granted by the proper authorities of any state normal school of this state may be revoked by the State Board of Education, for incompetency, immorality or unprofessional conduct on the part of the holder.

The sixteenth subdivision of section 33 provides also for the revocation of certificates and diplomas of teachers who are found to be immoral, but this provision seems to clearly indicate that the State Superintendent of Public Instruction must have the assent of a majority of the members of the State Board

of Education in this instance. Common school certificates, as indicated above, are granted by the Superintendent of Public Instruction, in accordance with the second subdivision of section 136 of the School Code. State certificates and life diplomas are granted by the Superintendent of Public Instruction, on the authority of the State Board of Education, of which he is a member and is *ex-officio* president, in accordance with the first subdivision of section 136 of the School Code.

Graduates of the normal department of the State University are granted diplomas by the board of regents of that institution; such diplomas authorizing the holders to teach in the public schools of this state during the natural life of the holders. The Superintendent of Public Instruction has no voice in the granting of these diplomas, and no special provision is made for their revocation.

According to the provisions of section 222 of the School Code, certificates and diplomas authorizing the holders to teach in the public schools of this state are granted to graduates of the several departments of the state normal schools of this state, and these diplomas are required to be signed by the Superintendent of Public Instruction, who is president of the State Board of Education. It is provided in the same section that these papers may be revoked by the State Board of Education for incompetency, immorality or unprofessional conduct, in accordance with section 4, chapter 85, Laws of 1905. In addition to the certificates and diplomas heretofore mentioned, county superintendents are authorized to grant, under certain circumstances, temporary certificates and also special certificates to teachers of certain subjects, in accordance with sections 146 and 137 of the School Code, as amended by Chapter 56, Laws of 1905; but no special provision is made for the revocation of such temporary or special certificates.

However, in more direct reply to your first question, I will say that the Superintendent of Public Instruction, under section 168 of the School Code (Code of Public Instruction) has the right to revoke any class of certificates or diplomas, inclu l-

ing those of the normal department of the State University, for non-attendance of the teacher at teachers' institute. Likewise under section 259 of the same Code he has power to revoke any class of certificate or diploma of any teacher, for violation of the law in the matter of contracts to teach. In all other instances, under the provisions of section 148 of the School Code, the regents of the State University would have the sole power of revocation of normal diplomas, granted by the State University.

In special reply to your second question, I will advise you, as indicated above, that the Superintendent of Public Instruction, for the offenses mentioned in section 168 and 259, may revoke any and all classes of certificates and diplomas, and his authority as to all other offenses is limited by the provisions of section 148 to those certificates which are granted by him.

I will say further, while discussing this matter, that in my opinion, county superintendents who authorize temporary and special certificates to teachers, in accordance with sections 146 and 137 of the School Code, as amended, may revoke such temporary or special certificates for good cause.

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Opinion of Attorney General J. D. Atkinson, addressed to R. B. Bryan, Superintendent of Public Instruction, October 20. 1905.

In reply to your inquiries of October 14, which read as follows:

"I hereby submit for your official opinion the following questions, viz.:

"1. In case a city of 10,000 or more population is united with a city or town, having less than 10,000 population, does the board of education of the new school district thus formed consist of all the members of the boards of directors of the two school districts so consolidated? That is to say, do all the members of these two boards continue to serve as members of the new board, so to speak, until the expiration of the respective terms for which they have been elected?

"2. In case of the uniting of two or more cities each having a popu-

lation of 10,000 or more, do all members of the several boards of education constitute the board of the new school district thus formed, and continue to serve in that capacity until the expiration of the terms for which they were elected?

"3. In case of the uniting of Seattle and South Seattle, or of Seattle and Ballard, for example, would any territory belonging to either the South Seattle district or the Ballard district, and lying outside of the corporate limits of these cities, become a part of the new school district, or would such territory have to be disposed of by the county superintendent, as provided in Sec. 5 of the Code of Public Instruction?"

I will say that, for administrative purposes, there are two distinct classes of school districts in this state. These are: First, school districts containing a population of less than ten thousand; and second, school districts containing a population of ten thousand or more. In the former class the local administration is entrusted to a board of three directors, one director being elected each year for a period of three years. Directors in this class of school districts are elected on the first Saturday in March and enter upon the discharge of their duties on the fourth Monday next succeeding their election, in accordance with sections 39 and 149 of Code of Public Instruction.

In the latter class the local administration is entrusted to a board of five directors. These directors are required, by existing law, to be elected on the first Saturday in December of each year, for a period of three years, one or two directors being elected at each annual election, as may be necessary in order to maintain a board of five members. Directors in districts of this class enter upon the discharge of their duties on the first Saturday in January next succeeding their election, in accordance with section 77 as amended by the Laws of 1905, and also section 80 of the Code of Public Instruction.

Specific provision is made by section 12 of said Code for the consolidation of two or more school districts, but this seems to relate solely to school districts of less than ten thousand inhabitants. This seems to be conclusive as it indicates that at the end of the terms of the members of the board, three directors shall then be elected. It cannot be made applicable to districts over ten thousand in population uniting with other like districts,

or with those with a smaller population, which would make the membership of both boards eight or ten directors. Then at the expiration of the terms five directors must be chosen, when section 12 explicitly says only three shall be chosen. This conclusion is more fully fortified when we take into consideration the terms of the members of the boards in the second class of districts, which begin and end at different times. Section 72 of the Code would seem to be broad enough to cover the proposition with reference to the union of two districts having a greater populaton that 10,000 inhabitants each, or where any one of the union districts had less than 10,000 population.

The question of the boundaries of the consolidated districts of the second class is somewhat involved, but it would seem, from a careful consideration of section 72 with other sections, that such new districts would embrace the territory of both the original districts until they should be changed according to law.

Applying this proposition to the concrete examples in your letter of inquiry, it seems reasonable to conclude that if Ballard or South Seattle should consolidate with the city of Seattle, the school board of the latter city would have sole jurisdiction for school purposes over the territory embraced and the districts consolidated from the union of the two municipalities under the name of the City of Seattle. Blackstone says that one of the elements of construction of laws to be considered, is the effect and consequences that will result. It would, therefor, seem that any other construction of this matter would be liable to lead to serious complications and absurd results.

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Opinion of Assistant Attorney General A. J. Falknor, addressed to R. B. Bryan, Superintendent of Public Instruction, October 21, 1905.

Your inquiry of October 18, 1905, received. Your inquiry reads as follows:

"I am requested to refer to you for your official opinion the question as to whether the holder of an elementary certificate granted by one of our state normal schools is legally qualified to hold the office of

county superintendent of common schools in a county of a class higher than the 27th.

"Statutory provisions bearing on this subject are not numerous, and the only ones to which I can refer you are to be found in Sections 31, 141 and 222, Code of Public Instruction.

"The courses of study for state normal schools are created by the Board of Higher Education of this state, and the rules governing the granting of certificates are determined by the State Board of Education. The Board of Higher Education consists of all members of the State Board of Education, together with the principals of the several state normal schools, the president of the state university and the president of the state college.

"For information regarding the course of study that must be completed in order to secure certificate from the elementary course of any of our state normal schools, see page 101 of the last report of the Superintendent of Public Instruction; for information in regard to the requirements for a first grade certificate see section 141 of the Code of Public Instruction and page 129 of the last biennial report of this office."

Accompanying such inquiry are a number of newspaper clippings, as well as the correspondence of your office. It would appear that on July 16, 1905, you received a letter from Miss Nellie Sweeney, in which was the following:

"You will confer upon me a great favor if you will answer this question for me. Is not a five-year certificate from the Whatcom State Normal sufficient to meet the conditions of eligibility as to qualify for the office of county superintendent of San Juan county?"

In answer to that letter you directed the following communication:

"Replying to yours of the 6th inst. I have to say that it would be a pretty contracted sort of a soul who would pronounce the five-year certificate from the State Normal school as inferior to the first-grade certificate. I think it covers the ground fully and goes beyond the first grade in requirements."

Subsequently, in answer to the editor of the San Juan Islander, there was addressed a communication concerning this controversy, reading as follows:

"As Mr. Bryan is at present ill and under orders from his physician to have no business relations with the office for weeks to come, I shall take it upon myself to reply to your letter of August 14th.

"In regard to the controversy that has arisen in regard to the eligibility of Miss Sweeney to the office of county superintendent, I wish

to say that this office considers the elementary normal diplomas in this state a better paper in every respect than the first grade certificate, and for this reason, acting with the consent of the State Board of Education, this office has for years been following the policy of issuing a first grade certificate upon such elementary normal certificate at the expiration of the latter, provided that the applicant had complied with the law governing renewal of first grade certificates. In other words, Miss Sweeney will be entitled to a first grade certificate under our present policy when her elementary normal certificate expires, provided she has taught 25 (24) months successfully during the life of said elementary normal certificate. Sections 31 and 32 of the School Code are mentioned in this matter. I think there is no doubt that any paper that is found to be equal or superior to the first grade certificate from an educational standpoint would be held sufficient by any court. And for this reason I have no doubt that Miss Sweeney has complied with the intent of the law in all particulars.

"Referring to the contention in regard to Supt. Bryan's report attempting to show that a first grade certificate is not authorized to be granted without examination upon anything less than the highest papers issued by a state normal school or other accredited institution, I wish to say that this matter in his report refers entirely to normal schools and other institutions outside of the state of Washington. The State Board of Education fixes the standard for common school certificates, and, acting within their authority, have sanctioned the past acts of this office in issuing first grade certificates on elementary normal certificates from our state normal schools. There is no room for any controversy in this matter.

"Those connected with this office certainly had no desire to see a change in the office of school superintendent in San Juan county, for we have always regarded Mrs. Buxton's administration as eminently satisfactory. We have no prejudice in the matter, and I have tried to state the law and also the policy of this office in exact words.

"In conclusion I wish to say that if any resident of San Juan county feels that an injustice has been done, I shall be glad to submit the question to the Attorney General if properly requested so to do."

The law governing the controversy is found in sections 31, 32, 137 and 222 of the Code of Public Instruction. It is therein provided that no person shall, at the time of election or appointment, be eligible to hold the office of county superintendent of common schools who shall not at the time have taught in the public schools of this state one school year, or nine months, and who shall not at the time of such election or appointment hold a state certificate or life diploma or a first grade common school certificate in full force and effect. Under section 222,

a student who completes the elementary course in the state normal schools of the state shall receive a certificate which shall entitle him to teach in the common schools of the state for a period of five years. Under section 137, a first grade common school certificate is valid for a period of five years from date of issue, and the holder thereof is entitled to teach in the schools of the state for such term. Apparently one is the equivalent of the other. There is no question but that the incumbent of the office in question is at least a *defacto* officer and that all the acts of said officer are valid. We are also disposed to the view that the spirit of the law was observed by the present incumbent, especially in view of her communication to you prior to election with reference to her qualification, but be that as it may, we do not believe it would be fair to the incumbent, at the suggestion of any private individual, for this office to pass upon her right to hold the office. Should an action by the proper authority, in *quo warranto,* be entered to try her title to the office, we would then feel called upon to answer more definitely.

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Opinion of Assistant Attorney General A. J. Falknor, addressed to R. B. Bryan, Superintendent of Public Instruction, October 24, 1905.

Your communication from the superintendent of the common schools of Chelan county, received. The communication reads as follows:

"Upon entering office I find that District 2 and District 4, each containing an incorporated town, have been consolidated.

"Submitting the question to the prosecuting attorney I find that he is of the opinion that such consolidation is illegal.

"Not satisfied with this opinion, and not knowing my duty in the matter of recognizing the consolidated district, I desire your opinion on the following points:

"1st: Is the consolidation of two districts each containing an incorporated town legal?

"2nd. If your answer to the above question is 'No,' what is my duty in recognizing the officers acting for the consolidated district, in appointing to fill vacancies on that board and in making apportionments of moneys to that district?"

We reluctantly reached the conclusion that school districts containing an incorporated town cannot consolidate. Section 72 of the Code of Public Instruction provides:

**"Each incorporated city or town in the state shall be comprised in one school district, and shall be under the control of one board of directors: *Provided*, That nothing in this section shall be so construed as to prevent the extension of such city or town district a reasonable distance beyond the limits of such city or town."**

While the limits of a district comprising an incorporated city or town may be extended beyond the city limits, still under the express language of said section, it could not be extended to include another incorporated city. This seems to have been the opinion also of the Attorney General's office heretofore. See opinion of E. W. Ross, Assistant Attorney General, June 25, 1903; also the opinion of W. B. Stratton, Attorney General, under date of June 18, 1903.

In answer to interrogatory No. 2, we are not advised as to whether the consolidation was so recent that the directors of the several districts are still acting as the board of directors for the new district. If they are, the answer to the question is easy. Treat the consolidation as absolutely void and recognize the respective boards acting for the consolidated districts as the directors of their respective districts. If the boards of the original districts have gone out of existence, it is our opinion that it would be necessary to appoint new boards of directors for the respective districts and apportion the money to the respective districts disregarding the consolidation.

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Opinion of Attorney General J. D. Atkinson, addressed to R. B. Bryan, Superintendent of Public Instruction, November 20, 1905.

In reply to your inquiry of November 16, in the matter of the interpretation of the ninth subdivision of section 22, Code of Public Instruction, as to whether the limitation of attendance, to pupils belonging to grades lower than the ninth, applies only to pupils attending private schools within the resident dis-

trict, or whether it applies to pupils attending the public schools outside of the resident district, I will say that the statute designated reads as follows:

"*Provided further*, If a pupil attends any public school of the state, outside of his resident district, or any private school within his resident district up to the ninth grade during the time the resident district maintains a school of the grade in which the pupil belongs, the attendance shall be credited to the district in which the pupil resides, unless mutually arranged otherwise by the directors; and the clerk of any district whose resident pupils are attending school in another district, shall notify the clerk of the district where such pupils attend when the school of said pupil's resident district will be in session, and of the grades that will be maintained; and without such notice all claims to attendance will be forfeited."

From this proviso above recited, it will be seen that attendance at a private school can only be awarded to pupils belonging to a grade lower than the ninth, and it is my understanding and my opinion that this limitation also applies to pupils attending any public school outside of the pupils' resident district.

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Opinion of Attorney General J. D. Atkinson, addressed to R. B. Bryan, Superintendent of Public Instruction, December 7, 1905.

In reply to your inquiry of November 28, reading as follows:

"Are joint school districts authorized to issue bonds? If joint districts are authorized to issue bonds, in which county must the bonds be registered and advertised for sale, and what must be the course of procedure in the levying of taxes for, and the payment of principal and interest of such bonds?"

I will say that section 117 of the Code of Public Instruction provides that the board of directors in any school district of the state, may borrow money and issue negotiable coupon bonds therefor, to an amount not exceeding five per cent. of the taxable property in such district. The remainder of the section, together with sections 118 to 127, inclusive, provide the mode and means by which such bonds are issued. Among these provisions are that "each bond so issued must be registered by the county treasurer in a book to be kept for that purpose, which must show the number and such data as is necessary to secure

a complete record of such bonds * * * and that the said bond shall be endorsed by the treasurer. * * * and it shall be the duty of said board of directors to meet with the county treasurer at his office and with him open said bids and sell such bonds to the most advantageous bidder. * * * Upon the sale of said bonds the board of directors shall, within ten days or as soon thereafter as practicable, deliver the bonds properly executed to the county treasurer, taking his receipt therefor. The county treasurer shall, upon the payment of the price agreed upon, deliver the same to the person or persons to whom sold, and place the moneys arising from such sale to the credit of the special school fund of the said district. * * * The county commissioners must ascertain and levy annually the tax necessary to pay the interest upon such bonds. * * * That the county treasurer, when authorized to do so, the board of directors of any school district, may invest any accumulated sinking fund of said district. * * * The county treasurer must pay out of any moneys belonging to the credit of the bond interest fund of the school district all interest upon any bonds issued under this act by such school district."

From the above it will be apparent that this law was intended by the legislature to apply strictly to school districts that lie wholly in one county; that if it were attempted to apply the law to a joint district which is composed of contiguous territory belonging to two counties, an embarrassing situation would at once be encountered in an endeavor to apply the above requirements to the acts of two different county treasurers, for which no provision is made, and which would be entirely cumbersome and too impracticable to be sensible or legal.

From the above considerations, as no express provision of law was made to apply to the issuance of bonds in joint districts, I am of the opinion that it was not the intention of the legislature that joint school districts issue bonds without express authority for such act, and such authority the legislature has not yet given. There is no doubt but that such suitable law would be well to be enacted for the benefit of joint districts at the next session of the legislature, and it would be well for your office,

together with people of said interested districts to endorse such legislative action in the future.

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Opinion of Attorney General J. D. Atkinson, addressed to R. B. Bryan, Superintendent of Public Instruction, December 29, 1905.

In reply to your favor of December 20, enclosing inquiries from Superintendent T. P. Storey of King county, and requesting answers to the questions, which are as follows:

"1st. If the county board of education should pass a resolution rescinding its former one of adoption, could its members be made to to respond personally in damages, if the courts should hold its action of rescission illegal?

"2nd. If the courts should hold the rescission inoperative, by which the book is retained in the schools, would the damages be other than nominal, even against the county board of education, officially?

"3d. In deciding the question whether the county board of education has acted legally or illegally by rescinding the former resolution of adoption, will not the inquiry be whether or not the book is partisan and pernicious in character and teachings? And, if the book is thus objectionable, and so found as a matter of fact, will not the action of the board be sustained? In other words, does not the character of the book determine our right to discard it?"

I have the honor to advise you,

First, that if the county board of education should pass a resolution rescinding its former one of adoption, if the court should hold its action of rescission illegal, it is my opinion that the members could not be made to respond personally in damages.

Second, if the court should hold the rescission inoperative, the damages would be rather nominal, and only such as could be proven, by the company or author furnishing the books, to be their net loss arising from lack of sales of the books brought about by said rescission, and such claim for damages would lie against the county board of education only officially, or in other words, against the district.

Third, in deciding the question whether the county board of education has acted legally or illegally by rescinding the former

resolution of adoption, the inquiry will be particularly whether or not the book is partisan or pernicious in character and teachings. If the book is thus proven to be objectionable, and so found as a matter of fact, it is my opinion that the action of the board would be sustained in court, and as suggested in your inquiry, the character of the book does determine the right to discard it.

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Opinion of Assistant Attorney General A. J. Falknor, addressed to R. B. Bryan, Superintendent of Public Instruction, January 9, 1906.

Your request, under date of January 4, 1906, received. Your inquiry reads as follows:

**"Can a school board, lawfully, in the name of the district, buy school text books and sell them to the pupils of the school, turning the money received from the sale of the books back into the school fund of the district?"**

As a school board is a body that can do only such acts as the law authorizes, and the law not authorizing the board to buy and sell text books, I therefore advise you that it would not be lawful for the school board to buy school books and sell them to the pupils of the school, turning the money back into the school fund of the district.

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Opinion of Assistant Attorney General A. J. Falknor, addressed to R. B. Bryan, Superintendent of Public Instruction, January 19, 1906.

Yours of recent date, enclosing a request from the Superintendent of Whatcom county, received. The inquiry reads as follows:

**"On the 15th day of August, 1905, the people of S. D. No. 54 of this county voted unanimously to bond the district in the sum of $1,000.00 and to build an addition to the school house. Some delay was experienced in getting bids submitted and the directors rejected all bids on the ground that the building of the addition would interfere seriously with the school, the reason given for the rejection, however, is that the bids were too high.**

**"The board of directors of said district have asked me to ask you to**

**submit to the attorney general the following questions: Can a board of directors having rejected all bids offered in response to a call for bids issued by them and authorized by vote of the people, proceed within a year after such rejection to readvertise for bids without again submitting the question to popular vote?'"**

In answer to an inquiry from this office as to whether it was the bid for bonds or the bid for the construction of the building that was rejected, we are informed that it was the bid for bonds that was rejected. The statute relative to the re-advertisement of bonds is as follows:

**"The board of directors may reject any and all bids, and within six months proceed to readvertise the sale of such bonds."**

We therefore advise you that after the expiration of six months after the date of rejection of the bids for the bonds the directors could not readvertise the sale of such bonds. It would be necessary for the proceeding to be begun over and the matter to again be submitted to the voters of the district.

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Opinion of Assistant Attorney General A. J. Falknor, addressed to R. B. Bryan, Superintendent of Public Instruction, January 19, 1906.

Your inquiry from the superintendent of common schools of Whatcom county, received. The inquiry reads as follows:

**"Will you please submit to the Attorney General the following questions: Just what is the meaning of the word 'village' as it appears in Sec. 4, Chapter 162 (H. B. No. 182) page 18 of the amendments to the Code of Public Instruction? Are directors in districts not containing a city or incorporated town but containing collection of inhabitated houses located on a recorded plat empowered to appoint an attendance officer for such district and if so what authority has such officer?**

**"We would like to enforce the attendance law in this county but the lawyers are succeeding in tying our hands very effectively with red tape."**

The statute in question has reference to the appointment of attendance officers. It provides in cities that the board of directors shall annually appoint one or more attendance officers, and in incorporated towns or in villages the board of directors

shall appoint an attendance officer. In other districts the county superintendent shall act as such officer.

The statute evidently was loosely drawn and it is not in harmony with itself. A city district is necessarily in an incorporated town, and where the line of difference exists between an ordinary village not incorporated and any other school district outside of an unincorporated town is difficult and impossible to state.

A village is defined to be a small assembly of houses in the country, less than a town or city. We imagine that the word "village" should be given in the statute in question its ordinary meaning, and in districts outside of incorporated cities, containing villages, that is, a small assembly of houses in the country, less than a town or city, the directors should appoint an attendance officer. In the practical operation and enforcement of this law you probably will encounter no difficulty in determining what a village is.

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Opinion of Assistant Attorney General A. J. Falknor, addressed to J. R. Buxtin, Prosecuting Attorney of Lewis county, February 15, 1906.

Your communication under date of February 13, 1906, received. Your communication reads as follows:

"I am requested by the superintendent of schools of the county for your opinion on the following matter:

"A public school teacher has a contract with the school board to teach school for a certain number of months. Christmas and New Years come during the time of this contract. The teacher dismisses school on Friday evening to convene again on a week from the following Tuesday. The two Mondays intervening are Christmas and New Years.

"Is the teacher required by law to teach such extra time as will make up these six days (the one week and one day) or should she teach four extra days to make up the time exclusive of the two holidays?"

Section 56 of the Code of Public Instruction reads as follows:

**"No teacher shall be required to teach school on Saturdays, or on Thanksgiving day, Christmas, New Years or Fourth of July; *Provided*, That no reduction from the teacher's time or salary shall be made by reason of the fact that a school day happens to be one of the days referred to in this section as a day on which school shall not be taught?"**

I am inclined to think that under the facts stated in your letter the teacher would not be entitled to the Christmas holiday but would be entitled to the second Monday—New Year's day—as school was held the balance of the week.

I do not think the law contemplates the allowing of compensation for holidays that occur during a period when the school is not in session. As the adjournment was until the Tuesday following New Year's day, a serious question arises as to whether the teacher is entitled to compensation for New Year's day, but as school was held the balance of the week, I believe that it is a reasonable presumption which should be resolved in favor of the teacher; that if Monday had not been a holiday, school would have been held the entire week and that an adjournment was made until Tuesday because Monday was a holiday.

The teacher therefore should not be allowed pay for the week during which there was no school and would be required to teach a full week or five days to make up the time lost by the vacation.

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Opinion of Assistant Attorney General A. J. Falknor, addressed to R. B. Bryan, Superintendent of Public Instruction, February 19, 1906.

We acknowledge receipt of the communication from the county superintendent of schools at Snohomish county, said communication reading as follows:

**"I would like to have you inform me what the practice is in this state regarding the taxation of taxable property—personal—included within Indian reservations.**

**"Tulalip reservation in this county has about $30,000.00 of personal property and same is not at this time listed with any school district for taxation.**

**"Can I extend the lines of a school district so as to include all the territory of said reservation and in this way get them on the list for the personal taxes? What are others doing in this regard? If it is possible, and it must be, I want to get at it at once. I am unable to secure any direct information here on the point."**

I do not at this time say that there is anything in the enabling act (clause 2, section 4) or under the state constitution (article VII section 1, and article XXVI section 2) and the treaty with these Indians in 1855 made by Governor Stevens, as agent for the United States, or the decisions of our own court (*Goudy vs. Meath,* 38 Washington 126; *Bird vs. Winger,* 24 Washington 269; *Jackson vs. Thompson,* 38 Washington, 282,) that would preclude the state from taxing personal property within Indian reservations, but so far as the question in the communication is involved, we do not believe the property could by that method be subjected to taxation.

These Indians are wards of the United States government and as long as the tribal relations exist, the Federal government is charged with the duty of educating the Indian's children. We do not believe it would be consistent with the jurisdiction of the Federal government for the county superintendent to attempt to include within the school district the territory of an Indian reservation for the purpose of subjecting the personal property therein to school taxes, especially for the reason that it would be unfair and unjust to require the Indians to pay taxes to support schools which their children would not attend.

We therefore advise you that the superintendent would not have authority to extend the lines of the school district so as to include the territory of the said reservation for the purpose of listing the personal property therein.

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Opinion of Attorney General J. D. Atkinson, addressed to R. B. Bryan, Superintendent of Public Instruction, March 5, 1906.

In reply to your request of March 3d for an opinion on the inquiry of a letter from Superintendent A. B. Warner of Tacoma, whose letter reads as follows:

"We are considering the question of free text books in Tacoma, and there seems to be a difference of opinion as to the authority of the board. Sec. 40 of Code of Public Instruction and the re-enactment of Sec. 92 by the Legislature of 1905, do not seem to agree; and still there is a question as to whether the second would prevent the school board from furnishing free text books without a vote of the electors. We are very anxious to have your opinion upon these two sections at once, and if possible, the opinion of the Attorney General."

I will say, that chapter 142, of the Session Laws of 1905, was passed by the legislature for the purpose of amending section 92, and other sections of the Code of Public Instruction. As the law now stands, subdivision 8 of chapter 142, of the Laws of 1905, requires that where free text books and supplies for children attending the public schools in cities of over 10,000, are to be provided, it is to be approved by a vote of the electors. If free text books are not voted by the electors, on the written statement of the city superintendent that parents of children are indigent and not able to purchase books, the school board may provide books free for such children. However, as indicated above, in the case of providing free text books generally for the city of Tacoma, in my opinion, the matter should be submitted to the electors for their approval before such books can be legally furnished.

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Opinion of Assistant Attorney General A. J. Falknor, addressed to R. B. Bryan, Superintendent of Public Instruction, March 8, 1906.

Yours of March 8, 1906, received. Your communication reads as follows:

"March 8, 1906.

"Supt. R. B. Bryan, Green River Hot Springs, Wash.:

DEAR SIR—The prosecuting attorney of Thurston county has advised the clerk of the election board of school district number 8, Thurston county, Wash., not to issue certificates of election to those elected, for the reason that the word director did not appear upon the ballot, said prosecuting attorney holding that this is in violation of the general election laws for directors.

"Please advise. Respectfully yours,

"FRED J. BROWN, County Superintendent.

"Hon. John D. Atkinson, Attorney General:

"DEAR SIR—Your opinion on above is respectfully asked.

"R. B. BRYAN, Supt. Pub. Instruction."

The ballot used by the electors indicated the directors being voted for, and following the names were the words "three years" and "two years," as the case might be. The ballot did not specifically state that the person being voted for was voted for as director of that district for two years or three years as the case might be, but the ballot simply contained the names and after the names two years or three years. When the votes were counted no objection was made to the ballots and they were regularly counted by the judges, and the clerk of the election now refuses to certify the election of the persons receiving the majority vote to the county superintendent.

The election notice in this matter, so we are informed provided for the election only of two directors for the terms of two and three years respectively. No other officers were to be voted for. There could be no mistaking the intention of the voter as to the officer or term voted for, as the only persons being elected were the two directors, and construing the ballot in connection with the notice of election, the intention of the voter is certain.

"Slight irregularities in the ballot which deceive no one cannot vitiate it. If the ballot expresses the intention of the voter with reasonable certainty, it is sufficient, and should be counted." Mechem on Public Officers, Sec. 200.

"It is a canon of election law that an election is not to be set aside for mere informality or irregularity which cannot be said in any manner to have affected the result of the election." *Seymore vs. Tacoma*, 6 Wash. 427.

"See also *Williams vs. Shouty*, 12 Wash. 362; *Richard vs. Klickitat County*, 13 Wash. 513; *Packwood vs. Kittitas County*, 15 Wash. 89."

Section 39 of the Code of Public Instruction, 1903, provides that "The ballot shall specify the term for which each is to be elected." Section 152 of the same compilation provides:

"The ballots shall be a paper ticket containing the names of the persons for whom the electors intend to vote, and designating the office to which such person so named is intended by him to be chosen."

Section 154 of the same compilation provides:

"No ticket shall be rejected on account of *form* or mistake in the initials or spelling of names if the judges can determine to their satisfaction the person voted for and the office intended."

In this instance the judges counted the ballots and the clerk's duty to certify is purely ministerial. We also think that the judges acted correctly in counting these ballots. There was no difficulty in determining to their satisfaction the person voted for and the office intended, and consequently under the laws of this state it was their duty to count the ballots. The clerk has no authority to attempt to review the action of the judges. (Sec. 208, Mechem on Public Officers.)

In this case the law provides: (Sec. 155 of Code of Public Instruction.)

"Persons having the highest number of votes given for each office shall be declared duly elected, and the *clerk of election shall immediately make out and deliver to each person so elected a certificate of election.* The clerk of election shall also make out a certificate showing the persons elected to each office at such election, with oaths of office of persons elected attached, and mail such certificate and oaths to the county superintendent of schools of the county in which the election is held."

This duty on the part of the clerk is ministerial and it is his duty to observe the law and not to attempt to review the duties that belong to the judges. We would advise that the clerk of said district be informed as to the matters contained in this communication.

We regret that this opinion is counter to the opinion evidently given by the prosecuting attorney of Thurston county, but from an examination of the law and the facts, we cannot reach any other conclusion than that heretofore stated.

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Opnion of Attorney General J. D. Atkinson, addressed to R. B. Bryan, Superintendent of Public Instruction, March 14, 1906.

Replying to your favor of a recent date, submitting questions as follows:

"1. Is a school district entitled to the attendance of a private school

**when such private school conducts fully one-third of its recitations and general exercises in a language other than the English language?"**

**"2. Is a school district entitled to attendance of pupils attending a private school when such private school is a school in name only, and where the instruction is little more than a farce?**

**"3. If the district in question is not entitled to claim the attendance of the pupils of these private schools, is it the duty of the truant officer to compel the pupils now attending these private schools to attend the public school in said district?"**

I will say, in answer to the first question, that the law does not exactly specify nor indicate the work that shall be done in a private school; and while it is to be presumed that it shall compare favorably with the work of the public school, there is nothing in the law to indicate that another language than English shall not be used or partly used in such private school, and if such private school does fairly good work, the district would be entitled to the attendance.

In reply to your second question, it is my opinion that if the work is a farce and does not in any manner compare favorably with the ordinary work of a public school, then the district is not entitled to the attendance.

As to the answer to your third question, I will say that the law as it now stands, does not justfy a truant officer in compelling pupils now attending private schools to leave such schools and attend a public school in the district.

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Opinion of Attorney General J. D. Atkinson, addressed to R. B. Bryan, Superintendent of Public Instruction, April 5, 1906.

In reply to your favor of recent date, submitting inquiries from J. J. Crabtree, chairman of the board of school directors of district No. 15 at Spangle, Washington; the inquiries being as follows:

**"1st. Can a new district just formed from an old one get its share of a ten mill school tax, specially voted upon, at a recent date, in the old district; or is the old district entitled to all of the special tax for the building of its own new school house proposed?**

**"2nd. Does the new school district have to pay any part of the**

**salary of the teacher for the remainder of the year, employed at the beginning of the year, by the directors of the old district?"**

In reply to the first of these inquiries, section 116 of the School Code (page 22, Laws of 1899) provides that when a new district is formed from one or more old districts, it shall be entitled to a just share of the school moneys to the credit of the one or more old districts from which the new district is formed, at the time the petition was granted to establish the new district, and that the county superintendent (or in case of an appeal, the board of county commissioners) shall award such moneys, according to the number of school children resident in the new district (at the time the new district was formed) as may be ascertained by a census (or counting) taken for that purpose. The same section provides also that the new district shall be entitled to all special taxes levied within the boundaries of the new district, for the current year within which the new district is formed; and that if such special tax or any part of it, has already been collected and placed to the credit of the afore-mentioned one or more old districts, it shall be the duty of the county treasurer, upon the order of the county superintendent, to transfer such special tax to the credit of the new district.

Therefore, it is the duty of the county treasurer, upon the order of the county superintendent, to transfer such an amount of the special tax recently voted upon, by the full old district, which vote was taken during the current year, and place it to the credit of the new district, in an amount coverng all the special tax levied within the boundaries of the new district. That is, the old district, No. 15, will have to turn over to the new district its proper share of the special tax.

In reply to the second question, the next previous section to 116 mentioned above, provides that a new district formed by the subdivision of an old one, shall be enttled to the proper share of public money belonging to the old district when school has actually been taught one month in the new district. At that time, in accordance with section 116, the new district is entitled to its just share of the school moneys belonging to the

old district at the time the petition was granted to establish the new district, in accordance with the school attendance; this apportionment to be directed by the county superintendent.

From this it will be deduced that the old district pays its teacher from whatever moneys it has left in its treasury after the county superintendent has divided and apportioned the proper amount of funds to the new district, which are of course to be promptly paid over at that time to said new district. After the new district has recived all its funds due it from the old district, it pays its own teacher, and the new district has nothing to do with paying the teacher of the old district.

I trust this is clear enough, but if it is not, I shall be pleased to elucidate the matter further.

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Opinion of Assistant Attorney General A. J. Falknor, addressed to R. B. Bryan, Superintendent of Public Instruction, April 7, 1906.

Yours of March 13, 1906, received. The communication is as follows:

"A few questions on compulsory attendance law, section 3, of above law, in case the person will not pay his fine, what is to be done? Our prosecuting attorney doesn't know and says the justice of peace cannot send them to jail, legally, unless the statute provided for it.

"Secondly, can a sheriff or constable make an arrest in a district outside of a city? I have an Austrian district where several arrests will have to be made. I could not compel them to appear before the justice and I want the sheriff to make the arrests. The attorney says that he has no right to do it. Am sorry to ask so many questions but we want to be sure of our ground before plunging into our first case."

The law referred to provides that any person violating the provisions of the act shall be fined in the sum of $25. This would bring the offense within the jurisdiction of the justice of the peace, (section 6674, volume 2 of Ballinger's Code; section 4683, volume 3 of Ballinger's Code). The latter section provides that if any fine imposed is not paid with costs, then the person shall be imprisoned until such fine and costs are paid at the rate of $3 per day for each day confined. We be-

lieve this law is applicable to any fine imposed under the compulsory attendance law by a justice of the peace.

With reference to the second inquiry, the law contemplates that for the purpose of aiding in the enforcement of the compulsory attendance law, the board of directors shall in city districts, incorporated towns or villages, appoint attendance officers. In all other districts the county superintendent acts as such official. This officer is vested with police powers, has authority to make arrests and serve all legal processes, with the right to enter all stores, mills, shops or other places where children may be employed for the purpose of investigating, and has authority to take into custody the person of any child between eight and fifteen years of age who may be a truant from school, and to conduct said child to his parents for investigation and explanation, or to the school which he should properly attend. The law also provides that this officer may arrest such child without a warrant.

So far as the special authority is concerned, we are disposed to believe that the authority of the officer is limited to the district in which he is appointed. The law also provides that the attendance officer shall institute proceedings against any officer, parent, guardian, person, company or corporation violating the provisions of this act. That is, the attendance officer could go before the justice of the peace and swear out a warrant against any of the parties named for violation of this act, and such warrant when placed in the hands of a constable or sheriff could be served anywhere in the county or as any criminal process.

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Opinion of Attorney General J. D. Atkinson, addressed to R. B. Bryan, Superintendent of Public Instruction, April 11, 1906.

In reply to your request for an opinion on the letter submitted by Prof. Joseph Milner, of Farmer, Washington, reading as follows:

"Will you kindly give me your opinion in the following? A school district is in debt and the board of directors hire a teacher without

**telling him of indebtedness. The teacher is forced to discount his warrants. Can he collect money from the district to make good the amount of discount? If board of directors are willing to pay such discount, is warrant drawn for discount on warrants legal?"**

I will say that the law provides that funds paid by school districts, as well as other public funds in this state, shall in general be paid out by a warrant drawn by the school board or other legally designated authorities. When a claim is presented for payment in accordance with previous contract or understanding as to the amount of an indebtedness, the law demands that a warrant be drawn for the exact amount of the indebtedness as the contract or claim legally and justly demands, and no more. That is, for instance, where it was agreed between the teacher and school board that he should teach for a certain stipulation per month, the board can legally draw a warrant only for the exact amount originally agreed upon, and cannot draw a warrant for any surplus amount which would make up for any loss suffered to the payee by reason of having to sell his warrant at a discount at any time in order to turn it into cash. The law provides that where a warrant is drawn and no funds are on hand it shall run at interest after being countersigned by the treasurer to the effect that no funds are on hand, and such interest is intended by the law to make up for any loss or discount or delay in payment of the warrant.

Therefore a teacher who thinks he is forced to discount his warrant cannot collect money from a district to make good the amount of his discount, nor can the Board, though willing, legally pay out money for such discount.

When a Board originally hires a teacher, they are at liberty to make a contract with him to pay him such salary per month as they choose, as being fair and reasonable. If at that time they anticipate that a teacher may feel himself forced to discount his warrants, and they should feel that they wished to take that into consideration and pay him a few dollars higher salary per month, than they might otherwise be inclined to do, the law would not be supposed to be cognizant nor interfere nor limit such action of the board.

Opinion of Assistant Attorney General A. J. Falknor, addressed to R. B. Bryan, Superintendent of Public Instruction, April 20, 1906.

"Section 1 of chapter 162, Laws of 1905, provides that excuses from attendance at school shall be given by the superintendent of the shcool, if there be such superintendent, and in case there be no such superintendent the excuse shall be given by the county superintendent.

"Now, the question has arisen as to what constitutes a city, or district, superintendent within the meaning of the section referred to.

"Sections 73 and 74, p. 41 of the Code of Public Instruction seem to define the meaning of the terms 'Superintendent' and 'Principal' as applied to city schools, but the question has arisen as to whether the terms used in section 74 of the School Code and the term 'Superintendent' as used in section 1 of chapter 162 of the Laws of 1905 are identical. In other words, in construing the meaning of the term 'Superintendent' as used in the last named provision, should school officers accept the definition given in section 74 of the Code of Public Instruction?

"Again, if a city district owns but one school house, but is compelled to rent an additional room or rooms for school purposes would the term 'Superintendent' apply to the head teacher of the school, or would he properly be designated a 'Principal' as the term is defined in section 73 of the Code of Public Instruction?"

Section 73 of the Compilation of the Code of Education provides that in all city or town districts where the number of children of school age is sufficient to require the employment of more than one teacher, the board of directors shall designate one of such teachers as principal and such principal shall be general supervisor over the several departments of his school.

Section 74 of the same compilation provides that the directors of city or town districts wherein schools are maintained in two or more buildings, shall elect one city or town superintendent who may be a teacher in the schools of such district and such city or town school superintendent shall be general supervisor over the schools of his district subject to the concurrence of the board of directors. The compulsory attendance law enacted by the legislature of 1905 provides that all parents, guardians and other persons who have the immediate custody of any child from eight to fifteen years of age shall cause such child to attend the

public schools of the district in which the child resides for the full time in which such school may be in session or private school for the same time unless the child is physically or mentally unable to attend, has already attained a reasonable proficiency in the branches required by law to be taught in the first eight grades of public schools in this state or provided by the course of study of the said school, is otherwise being furnished with the same education *or has been excused from such attendance for some other sufficient reason by the superintendent of the schools of the district in which the child resides, if there be such a superintendent, or in all other cases, by the county superintendent of common schools.*

While we would prefer, if the statutes would permit such a construction, to hold that a principal of the schools of a district not having a superintendent would be the proper authority to excuse any pupil within the said ages, from attendance at school, yet where the statute had defined a superintendent of schools of a district and provided in all other cases that the county superintendent of schools should have the authority to excuse, we do not see how we can so hold. While the statute may be narrow in this respect and draw the distinction very fine between a principal and superintendent yet the statute has made the distinction and we feel bound by it. If the district does not maintain school in more than one building it could not have a superintendent, and the county superintendent would be the authority intended to excuse from attendance.

With reference to your further question as to whether the term superintendent would apply to one selected by the directors of a district which maintains school in more than one building, of which, however, one is rented, we advise you that we do not believe that it would make any difference whether the room was rented or owned by the district. The statute only provides that where schools are maintained in two or more buildings a superintendent may be elected .

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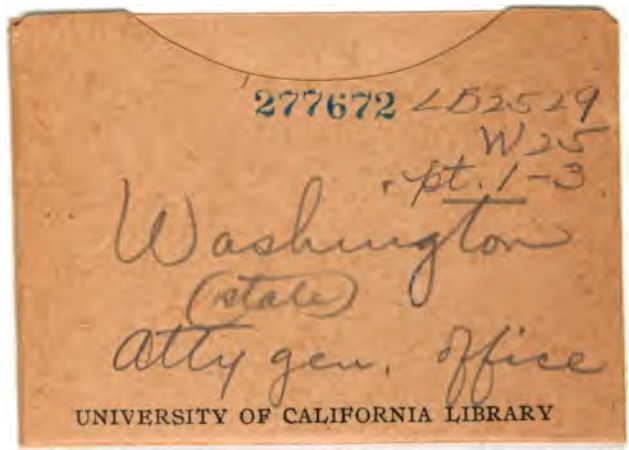
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